

---

# TEXAS REGISTER

*Volume 35 Number 14*

*April 2, 2010*

*Pages 2685 – 2792*

---



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

**Secretary of State –**  
Hope Andrade

**Director –**  
Dan Procter

**Staff**  
Leti Benavides  
Dana Blanton  
Kris Hogan  
Belinda Kirk  
Roberta Knight  
Jill S. Ledbetter  
Juanita Ledesma  
Preeti Marasini

# IN THIS ISSUE

## **GOVERNOR**

Appointments .....	2689
Proclamation 41-3233 .....	2689
Proclamation 41-3234 .....	2690

## **ATTORNEY GENERAL**

Requests for Opinion .....	2691
----------------------------	------

## **TEXAS ETHICS COMMISSION**

Advisory Opinion Request .....	2693
--------------------------------	------

## **PROPOSED RULES**

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### **REIMBURSEMENT RATES**

1 TAC §355.746 .....	2696
1 TAC §355.746 .....	2696

### **TEXAS EDUCATION AGENCY**

#### **STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND**

19 TAC §33.65 .....	2697
---------------------	------

#### **ADAPTATIONS FOR SPECIAL POPULATIONS**

19 TAC §§89.21 - 89.23, 89.28 - 89.35 .....	2704
19 TAC §§89.30 - 89.33 .....	2707

#### **FOUNDATION SCHOOL PROGRAM**

19 TAC §105.1011 .....	2708
19 TAC §105.1012 .....	2709

#### **TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS**

19 TAC §§111.52, 111.60, 111.61 .....	2709
---------------------------------------	------

#### **TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE**

19 TAC §112.71 .....	2711
19 TAC §112.71, §112.72 .....	2711

#### **SCHOOL DISTRICT PERSONNEL**

19 TAC §153.1021 .....	2715
------------------------	------

### **TEXAS BOARD OF PROFESSIONAL ENGINEERS**

#### **LICENSING**

22 TAC §133.27 .....	2721
22 TAC §133.53 .....	2721
22 TAC §133.61 .....	2722

#### **COMPLIANCE AND PROFESSIONALISM**

22 TAC §137.77 .....	2722
----------------------	------

## **COMPTROLLER OF PUBLIC ACCOUNTS**

### **TAX ADMINISTRATION**

34 TAC §3.75 .....	2723
34 TAC §3.80 .....	2725
34 TAC §3.80 .....	2725
34 TAC §3.344 .....	2729
34 TAC §3.1271 .....	2733

### **TEXAS COMMISSION ON JAIL STANDARDS**

#### **GENERAL**

37 TAC §251.6 .....	2737
---------------------	------

#### **VARIANCE PROCEDURE RULES**

37 TAC §299.3 .....	2737
---------------------	------

## **WITHDRAWN RULES**

### **TEXAS YOUTH COMMISSION**

#### **TREATMENT**

37 TAC §87.69, §87.79 .....	2739
37 TAC §§87.69, 87.79, 87.81 .....	2739

## **ADOPTED RULES**

### **TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **LIBRARY DEVELOPMENT**

13 TAC §§1.111 - 1.120, 1.123 .....	2741
13 TAC §§1.111 - 1.121, 1.123 .....	2741

#### **TEXSHARE LIBRARY CONSORTIUM**

13 TAC §88.1 - 8.5 .....	2742
--------------------------	------

### **TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### **LICENSES**

22 TAC §515.5 .....	2745
22 TAC §515.9 .....	2745

PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM	
22 TAC §520.3 .....	2745

### **TEXAS YOUTH COMMISSION**

#### **TREATMENT**

37 TAC §87.69, §87.79 .....	2746
37 TAC §§87.69, 87.79, 87.81 .....	2746

## **RULE REVIEW**

### **Agency Rule Review Plan**

Texas State Library and Archives Commission .....	2747
---	------

### **Proposed Rule Reviews**

Texas Education Agency.....	2747	Request for Proposals #303-0-10640-A.....	2766
<b>Adopted Rule Reviews</b>		<b>Department of Family and Protective Services</b>	
Texas State Soil and Water Conservation Board .....	2747	Title IV-B Child and Family Services Plan .....	2766
<b>IN ADDITION</b>		<b>Texas Health and Human Services Commission</b>	
<b>Texas Department of Agriculture</b>		Public Notice.....	2766
Request for Applications: Young Farmer Grant Program .....	2749	<b>Department of State Health Services</b>	
<b>Texas Appraiser Licensing and Certification Board</b>		Licensing Actions for Radioactive Materials .....	2767
Correction of Error.....	2750	Public Hearings for 2012 - 2013 Genetic Services Resource Allocation Plan .....	2771
<b>Department of Assistive and Rehabilitative Services</b>		<b>Texas Department of Housing and Community Affairs</b>	
Notice of Contract Award .....	2751	Housing Trust Fund Program.....	2771
Notice of Contract Award .....	2752	Request for Proposals for Inspection Services for Single Family Structures.....	2771
<b>Office of the Attorney General</b>		<b>Houston-Galveston Area Council</b>	
Notice of Settlement of a Texas Health and Safety Code and Texas Water Code Action.....	2752	Request for Proposals .....	2772
Notice of Settlement of a Texas Water Code Enforcement Action .....	2752	<b>Texas Department of Insurance</b>	
<b>Capital Area Rural Transportation System</b>		Company Licensing .....	2772
Request for Proposals .....	2753	<b>Texas Lottery Commission</b>	
<b>Coastal Coordination Council</b>		Instant Game Number 1239 "Double Your Luck" .....	2772
Notice of Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	2753	Instant Game Number 1246 "Gold Fever" .....	2776
<b>Comptroller of Public Accounts</b>		Instant Game Number 1249 "\$1,000 Spin" .....	2780
Local Sales Tax Rate Change Effective April 1, 2010 .....	2754	Instant Game Number 1251 "Triple Cash" .....	2784
<b>Office of Consumer Credit Commissioner</b>		<b>Public Utility Commission of Texas</b>	
Notice of Rate Ceilings.....	2757	Project No. 35792 - Workshop on Rulemaking Relating to the Goal for Renewable Energy .....	2788
<b>Texas Commission on Environmental Quality</b>		Public Notice of Workshop on the Rulemaking for Utility Infrastructure Storm Hardening .....	2789
Correction of Error.....	2758	<b>Texas Department of Savings and Mortgage Lending</b>	
Enforcement Orders .....	2758	Notice of Application of Change of Control of a State Savings Bank .....	2789
Notice of Comment Period and Announcement of Public Meeting on Proposed Air Quality Standard Permit for Thermoset Resin Facilities .....	2762	<b>Texas Water Development Board</b>	
Notice of Water Quality Applications.....	2763	Notice of Opportunity to Comment on Water Planning Area Boundaries .....	2789
Request for Nominations .....	2765	Requests for Statements of Qualification for Water Research.....	2789
<b>Texas Facilities Commission</b>			

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for March 18, 2010

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, William A. Masterson of Guthrie (replacing John Brieden, III of Brenham who resigned).

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2012, Samuel M. Sanchez of Fort Worth (replacing Charlye Farris of Wichita Falls who is deceased).

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2016, Michael Bernhardt of Wichita Falls (replacing Stephen Gustafson of Wichita Falls whose term expired).

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2016, J. Kenneth Bryant of Wichita Falls (replacing Munir Lalani of Wichita Falls whose term expired).

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2016, Tiffany Dawn Burks of Grand Prairie (replacing Ben Wible of Sherman whose term expired).

Appointed to the Juvenile Justice Advisory Board for a term at the pleasure of the Governor, Maria Estela Quintanilla of Laredo.

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2013, Sarah Abraham of Sugar Land (replacing Maria Teran of El Paso who resigned).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Stephanie Anne Schulte of El Paso (replacing Lori Kennedy who moved out of state).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Victoria Camp of Austin (replacing Syndey Register of Georgetown whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Ben Crouch of College Station (Mr. Crouch is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Rodman F. Goode of Cedar Hill (Mr. Goode is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Nancy Holmes Ghigna of The Woodlands (Ms. Ghigna is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Henry Porretto of Galveston (Mr. Porretto is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Richard L. Reynolds of Manor (replacing Darlene McLaughlin of Elgin whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Debbie Unruh of Amarillo (Ms. Unruh is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2012, Mary Anne Wiley of Austin (Ms. Wiley is being reappointed).

Appointed as District Attorney for the 105th Judicial District, Nueces County, for a term until the next General Election and until her successor shall be duly elected and qualified, Anna Maria Jimenez of Corpus Christi. Ms. Jimenez is replacing Carlos Valdez who retired.

Appointed to the Governor's Advisory Council on Physical Fitness for a term to expire July 26, 2011, Garrett Weber-Gale of Austin (replacing Michael Haynes of Austin).

Appointed to the Board of Pilot Commissioners for Galveston County Ports for a term to expire February 1, 2014, Henry Porretto of Galveston (replacing Diane Kerkhove of League City whose term expired).

Appointed to the One Call Board for a term to expire August 31, 2012, Dean D. Bernal of Austin (Mr. Bernal is being reappointed).

Appointed to the One Call Board for a term to expire August 31, 2012, Julio Cerda of Mission (replacing Bill Daugette of Huntsville whose term expired).

Appointed to the One Call Board for a term to expire August 31, 2012, Jason Hartgraves of Frisco (replacing Christopher Rourk of Dallas whose term expired).

Appointed to the One Call Board for a term to expire August 31, 2012, Janie Walenta of Quitman (replacing John Menchaca, II of Austin whose term expired).

Rick Perry, Governor

TRD-201001393



## Proclamation 41-3233

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Kip Averitt has caused a vacancy to exist in the Texas State Senate District No. 22, which consists of Bosque, Coryell, Ellis, Falls, Hill, Hood, Johnson, McLennan, Navarro and Somervell Counties; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such vacancy; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Senate District No. 22 on Saturday, May 8, 2010, for the purpose of electing a state senator to serve out the unexpired term of the Honorable Kip Averitt.

Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state no later than 5:00 p.m. on April 7, 2010.

Early voting by personal appearance shall begin on April 26, 2010, in accordance with Section 85.001(e) of the Texas Election Code.

A copy of this order shall be mailed immediately to the county judges of Bosque, Coryell, Ellis, Falls, Hill, Hood, Johnson, McLennan, Navarro and Somervell Counties, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 22 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of March, 2010.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-201001391

◆ ◆ ◆

Proclamation 41-3234

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Terri Hodge has caused a vacancy to exist in the Texas House of Representatives District No. 100, which consists of part of Dallas County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such vacancy; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in House District No. 100 on Saturday, May 8, 2010, for the purpose of electing a state representative to serve out the unexpired term of the Honorable Terri Hodge.

Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state no later than 5:00 p.m. on April 7, 2010.

Early voting by personal appearance shall begin on April 26, 2010, in accordance with Section 85.001(e) of the Texas Election Code.

A copy of this order shall be mailed immediately to the county judge of Dallas County, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 100 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of March, 2010.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-201001392

◆ ◆ ◆

# THE ATTORNEY GENERAL

---

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

---

Requests for Opinion

**RQ-0870-GA**

**Requestor:**

The Honorable Florence Shapiro

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

**Requestor:**

Ms. Virginia Porter

Dallas County Auditor

509 Main Street, Suite 407

Dallas, Texas 75202

Re: Authority of the Dallas County Commissioners Court to retain independent legal counsel in particular circumstances (RQ-0870-GA)

**Briefs requested by April 19, 2010**

**RQ-0871-GA**

**Requestor:**

The Honorable Yvonne Davis

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether parents may use the services of an advocate in dealing with matters of their child's education (RQ-0871-GA)

**Briefs requested by April 21, 2010**

**RQ-0872-GA**

**Requestor:**

The Honorable J. Russell Ash

Reagan County Attorney

Post Office Box 924

Big Lake, Texas 76932

Re: County attorney's use of the hot check fund to supplement his secretary's salary (RQ-0872-GA)

**Briefs requested by April 21, 2010**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201001450

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 24, 2010

◆ ◆ ◆

# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request

**AOR-553.** The Texas Ethics Commission has been asked to consider whether a communication relating to a measure that a city is considering using public funds to publish, complies with §255.003 of the Election Code.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201001435  
Natalia Luna Ashley  
General Counsel  
Texas Ethics Commission  
Filed: March 23, 2010

◆ ◆ ◆



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

The Texas Health and Human Services Commission (HHSC) proposes to repeal current §355.746 and replace it with new §355.746, concerning Reimbursement Methodology for Mental Retardation (MR) Service Coordination.

##### Background and Justification

The repeal and replacement are proposed to more accurately reflect the current reimbursement methodology for service coordination services provided to Medicaid-eligible individuals who are eligible for service coordination and are enrolled in the MR program.

The providers in this program are currently paid a statewide interim rate which is then later cost-settled to each provider's cost within certain parameters. Providers whose costs are less than 95 percent of the interim rate must repay the difference between their costs and 95 percent of the interim rate. Providers whose costs are more than the interim rate are paid an amount equal to their cost, up to 125 percent of the interim rate. The existing rate is based upon the provider's cost using the State's Time And Financial Information (TAFI) methodology and a time study. The Centers for Medicare and Medicaid Services (CMS) has indicated the TAFI may continue to be used in determining state plan rates for these programs; however, a time study is not required.

The proposed new rule explains that HHSC will determine an initial rate based on the cost experience of the current MR Service Coordination program and the appropriations determined for the Home and Community-Based Services (HCS) case management services. Once HHSC is assured that the cost data collected is reliable, prospective statewide reimbursement rates will be developed based on cost report data submitted by providers. The proposed new rule will discontinue the requirement of a time study in determining rates and will discontinue the reconciliation of the rate to the individual provider's costs. The allowable and unallowable cost rules and allocation guidelines used for completion of the revised cost report will be the HHSC agency rules used for other Medicaid programs that use a cost report for rate determination.

##### Section-by-Section Summary

Proposed new §355.746 adds new language to update the reimbursement methodology and eliminates all the existing rule language.

Proposed new subsection (a) updates definitions in the rule.

Proposed new subsection (b) explains that qualified providers are reimbursed a monthly uniform statewide rate for service coordination.

Proposed new subsection (c) states that rates are determined in accordance with other sections under this title.

Proposed new §355.746(c)(1) provides the initial rate methodology effective June 1, 2010, which will be determined by analyzing the combined costs from two sources: the reconciled rates paid to providers for services delivered under the MR Service Coordination program prior to June 1, 2010 and the legislative appropriations designated to provide case management services for HCS clients as detailed in Special Provisions Relating To All Health and Human Services Agencies, Section 48 Contingency Appropriation for the Reshaping of the System for Providing Services to Individuals with Developmental Disabilities.

Proposed new subsection (c)(2) explains that HHSC will refine the reimbursement methodology for the period June 1, 2010, through June 1, 2011, by analyzing costs submitted by the program after June 1, 2010.

Proposed new subsection (d) updates the cost reporting requirements.

Proposed new subsection (e) identifies the desk review and field audit requirements.

Proposed new subsection (f) identifies the requirement to allow access to those records by HHSC.

##### Fiscal Note

Gordon Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will not be a fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

##### Small and Micro-business Impact Analysis

Mr. Taylor has also determined that there will not be an effect on small businesses or micro-businesses to comply with the amended requirements, as they will not be required to alter their business practices as a result of the rule.

There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public and clients will benefit from adoption of the rule. The anticipated public benefit will be continued access to care for individuals with mental retardation and an up-to-date description of the Medicaid reimbursement methodology in rule.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code. Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. The change this rule makes does not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

#### Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### 1 TAC §355.746

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.746. Reimbursement Methodology for Mental Retardation (MR) Service Coordination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2010.

TRD-201001350

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 424-6900



#### 1 TAC §355.746

##### Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.746. Reimbursement Methodology for Mental Retardation (MR) Service Coordination.

(a) Definitions. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Allowable costs--Those expenses that are reasonable and necessary costs in the normal conduct of operations relating to case management services as defined in §355.102(f)(1) and (2) of this title (relating to General Principles of Allowable and Unallowable Costs).

(2) Provider--The mental retardation authority (MRA) which, pursuant to Texas Health and Safety Code, §531.002(11), the Texas Health and Human Services Commission (HHSC) has delegated its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in the most appropriate and available setting to meet individual needs in one or more local service areas.

(3) Unit of Service--A monthly face-to-face billable unit.

(4) Reconciled Rates--The allowable cost reconciled to the billable units.

(b) Reimbursement. Qualified providers are reimbursed a monthly uniform statewide rate for service coordination provided to Medicaid-eligible individuals.

(c) Rate methodology.

(1) Initial rate. The initial rate effective June 1, 2010, will be determined by analyzing the combined costs from two sources:

(A) the reconciled rates paid to providers for services delivered under the MR Service Coordination program prior to June 1, 2010; and

(B) the legislative appropriations designated to provide case management services for Home and Community-Based Services clients as detailed in Special Provisions Relating To All Health and Human Services Agencies, Section 48 Contingency Appropriation for the Reshaping of the System for Providing Services to Individuals with Developmental Disabilities.

(2) Rates determined for effective dates after June 1, 2010. At such time as HHSC determines that cost data collected as described in subsection (d) of this section is reliable, statewide reimbursement rates will be developed based on cost report data submitted by providers in the following manner:

(A) Each provider's total allowable costs are analyzed and projected from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices).

(B) Each provider's projected cost from subparagraph (A) of this paragraph is divided by the provider's units of service delivered to determine the projected cost per unit of service.

(C) The median provider cost per unit of service is then calculated as follows: The allowable costs per unit of service for each service for each contracted provider are arrayed from low to high. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is the proposed rate.

(3) Rates are determined according to §355.702 of this title (relating to Method for Cost Determination). The Health and Human Services Commission (HHSC) may also adjust reimbursement if new legislation, regulations, or economic factors affect costs, as described in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Reporting of costs. Each provider must submit financial and statistical information in a cost report. A survey may be developed and used to gather additional or specific information.

(1) Cost reporting guidelines. Except for the provision defining the cost report year, Providers must follow the cost-reporting guidelines as specified in §355.702 of this title.

(2) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per provider per federal fiscal year.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates. To ensure that the database reflects costs and other information which are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the

appropriate adjustments to expenses and other information reported by providers.

(B) Individual provider cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(4) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 of this title and §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(5) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(e) Desk reviews and field audits. As specified in §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), HHSC reviews cost reports. Cost reports not completed according to instructions or rules will be corrected and resubmitted by the provider within the time frame prescribed by HHSC. HHSC may perform a sufficient number of audits each year to ensure the fiscal integrity of the rates. HHSC notifies providers of disallowances and adjustments to reported expenses made during desk reviews and on-site audits of cost reports according to §355.107 of this title (relating to Notification of Exclusions and Adjustments). If a provider disagrees with HHSC on cost report disallowances, it may request a review of the disallowances as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(f) Access to records. The provider must allow HHSC access to any and all records necessary to verify information on the cost report in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2010.

TRD-201001351

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 424-6900



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND**

##### **19 TAC §33.65**

The State Board of Education (SBOE) proposes an amendment to §33.65, concerning the guarantee program for school district bonds. The section establishes provisions for the administration of the bond guarantee program. The proposed amendment would modify the policies for administration of the school district

bond guarantee program to comply with requirements related to the recent decision of the Internal Revenue Service to reopen the program and to align with the policies of the intercept program to provide credit enhancement for school district bonds that was established by the Texas Education Code (TEC), Chapter 45, Subchapter I, as added by Section 75 of House Bill (HB) 3646, 81st Texas Legislature, 2009. The proposed amendment would also modify the existing limitations on access to the guarantee and add explanations of the actions that would follow a default by a school district.

The TEC, §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the bond guarantee program as authorized in the TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. The TEC, §45.063, authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program. Section 33.65 is the rule the SBOE adopted to implement the program.

Section 33.65 sets out the statutory provisions for the bond guarantee program, provides definitions, and explains the requirements of and policies related to the program's application process. The rule also provides limitations on access to the guarantee program and allows for the commissioner to allocate specific holdings of the Permanent School Fund under certain conditions. The rule explains what effect defeasance has on guaranteed bonds and sets out specific program conditions for bonds issued or guaranteed on certain specified dates. The rule also explains program payment conditions and guarantee restrictions.

The proposed amendment would make the following changes to 19 TAC §33.65.

Throughout the rule, references to the School District Bond Enhancement Program (SDBEP) and explanations of how bond guarantee program policies relate to SDBEP policies would be added.

The section title would be changed from *Guarantee Program for School District Bonds* to *Bond Guarantee Program* to reflect the commonly used name of the program.

In subsection (b), providing definitions, the definition for *annual debt service* would be modified to explicitly exclude debt that was no longer outstanding. The definition for *average daily attendance* would be modified to reference the definition used in the TEC. The definition for *enrollment growth* would be modified to reference the definition used in 19 TAC §129.1025. The definition for *refunding issue* would be modified to reference notes issued to provide interim financing. Definitions would be added for the terms *Bond Guarantee Program*, *notes issued to provide interim financing*, and *total debt service*. In addition, the list of definitions would be reorganized in alphabetical order.

Subsection (c), on data sources, would be modified so that the subsection lists actual data sources and not definitions of terms already defined in subsection (b).

In subsection (d), on application processing, the number of days between application deadline and prioritization of applications would be changed to 15. Also, throughout subsection (d), references to the modified approval process in subsection (e) would be added.

Subsection (d)(2) would be modified to explain that an applicant school district would be ineligible for consideration for the guarantee if its lowest credit rating from any credit rating agency was the same as or higher than that of the BGP.

Subsection (d)(3) would be modified to change certain requirements for refunding bonds.

Subsection (d)(4) would be modified to reference added provisions in subsection (e) and to reference the multiplier used to determine PSF capacity.

Subsection (d)(7) would be modified to change the number of business days within which a district would be notified of its application status from 10 to 15.

Subsections (d)(7) and (d)(9) would be modified to change the length of time before the expiration of approval for the guarantee from 120 days to 180 days.

In subsection (e), on application for the guarantee, the amount of the program application fee would be explicitly stated. Also, the provisions setting out the approval process would be altered to make having a final approval process contingent on the PSF capacity's dropping to 10 percent or less.

Subsection (f), on limitations on access to the guarantee, would be modified to allow the commissioner to limit approval based on annual debt service or total debt service and to clarify provisions relating to enrollment growth and the application of the limitation.

Subsections (n) through (r) would be added to include statutory requirements related to notice of default, payments from the PSF, whether bonds are accelerated on default, reimbursement of the PSF, and repeated failure of a district to make bond payments.

The proposed amendment would have no reporting implications but would have minor procedural implications. Specifically, districts would have 180 days instead of 120 days to get approval for the bonds from the Office of the Attorney General. Also, districts would be notified of application status within 15 days of the application deadline instead of within 10 days. The proposed amendment would have no locally maintained paperwork requirements.

Lisa Dawn-Fisher, deputy associate commissioner for school finance, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs for state government as a result of enforcing or administering the proposed amendment. The proposed rule action would have fiscal implications for school districts, but not any beyond what is provided for by the authorizing statute. Any costs to school districts to participate in the guarantee program are outweighed by the program's benefits.

Administration of the bond guarantee program provides school districts with access to low-cost bonds. Potential savings to school districts are impossible to estimate at this time. Districts that are approved to issue bonds with the benefit of the guarantee provided by the bond guarantee program experience a savings in two ways. First, the guarantee is provided at a cost lower than that for private bond insurance. Second, districts are able to get lower interest rates on bonds that have a guarantee than they can otherwise get. Actual savings are influenced by the unique circumstances of each school district that proposes to issue bonds, including the market's assessment of the district's financial condition and the cost and availability of private bond insurance.

Dr. Dawn-Fisher has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the incorporation of modifications for the bond guarantee program that provides low-cost bond insurance to school districts

in Texas. The program also ensures that the bonds issued by school districts under the program are rated competitively in the bond market. A competitive bond rating allows districts to market their bonds at lower interest rates and thus reduces the long-term costs of the bonds for school districts and taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under TEC, Chapter 45, Subchapter C, and §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program.

The amendment implements the Texas Education Code, §7.102(c)(33) and §45.063.

§33.65. Bond Guarantee Program [for School District Bonds].

(a) Statutory provision. The commissioner of education must administer the guarantee program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the state information depository (SID), if the district has outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the SID as of the date of the application deadline.

(B) The annual debt service does not include: [the amount of debt service to be paid on the bonds for which the reservation is sought;]

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.

(C) The debt service amounts used in this calculation for variable rate bonds will be those that [which] are published in the final official statement.

(2) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications

must be received by the TEA division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(3) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(4) Bond Guarantee Program (BGP)--The guarantee program for school district bonds that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(5) [(2)] Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.

[(3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be received by the Texas Education Agency division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.]

[(4) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type maintenance of tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:]

[(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or]

[(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.]

[(5) Refunding issue--An issuance of bonds for the purpose of refunding bonds that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds that were authorized by a bond election under the TEC, §45.003.]

(6) Combination issue--An issuance of bonds for which an application is filed for a guarantee that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

[(7) Average daily attendance (ADA)--Total refined average daily attendance as defined by §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook).]

(7) [(8)] Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(8) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new

money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(9) Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the guarantee under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the Office of the Attorney General or issued in accordance with proceedings that have been approved by the Office of the Attorney General; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(10) Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.

(11) Total debt service--Total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the SID as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement.

(c) Data sources.

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most

recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the SID as of the date of the application deadline; and

~~[(C) annual debt service, as defined in subsection (b)(1) of this section, due during the fiscal year in which the proposed debt will be issued. The amount of debt service on the proposed bond issue will not be included in the calculation of annual debt service; and]~~

(D) [enrollment increases over the previous five years, which will be determined using] enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) Application processing. To facilitate prioritization of applications for the guarantee or the credit enhancement authorized under §61.1038 of this title (relating to School District Bond Enhancement Program), all applications received during a calendar month will be held until the fifteenth [twentieth] business day of the subsequent month. On the fifteenth [twentieth] business day of each month, the commissioner of education will announce the results of the prioritization described in paragraph (5) of this subsection and process applications for initial approval for [øf] the guarantee or initial and final approval for the guarantee, as applicable, up to the available capacity as of the application deadline, subject to the requirements of this subsection. If Permanent School Fund (PSF) capacity has been exhausted, the commissioner will process the application for approval of the credit enhancement as specified in §61.1038 of this title.

(1) The school district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(2) The actual guarantee of the bonds is subject to the [initial] approval process [and the final approval process] prescribed in subsection (e) of this section. An applicant school district is ineligible for consideration for the guarantee if its lowest credit rating from any credit rating agency is the same as or higher than that of the BGP.

(3) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds, except that subparagraph (D) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) The district must have an accreditation status of Accredited as defined by §97.1055 of this title (relating to Accreditation Status). If the district has an accreditation status of Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the refunding bonds will not be eligible to retain the guarantee. Districts with an accreditation status of Not Accredited-Revoked will not be eligible to retain the guarantee on the refunding bonds.

(B) The bonds to be refunded must have been: [previously guaranteed by the Permanent School Fund (PSF). Only refunding issues as defined in subsection (b)(5) of this section are eligible for the guarantee.]

(i) previously guaranteed by the PSF or approved for credit enhancement under §61.1038 of this title;

(ii) issued on or after November 1, 2008, and before the effective date of §61.1038 of this title; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(9) of this section.

(C) Only refunding issues as defined in subsection (b)(10) of this section are eligible for the guarantee.

(D) [(C)] The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and that the refunding bond or bonds will [must] not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds.

(E) [(D)] If a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrate [demonstrates] compliance for both the new money portion of the issue and the refunding portion of the issue.

(F) [(E)] The refunding transaction must comply with the provisions of paragraphs (7) and (9) of this subsection.

(4) The commissioner will estimate the available capacity of the PSF on a monthly basis so that the commissioner is able to make the determination described in subsection (e)(2) of this section [to provide initial approval to the guarantee of school district bonds]. If necessary, the [The] commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (e)(4) [(e)(3)] of this section. The calculation of capacity will be based on a multiplier of three times the cost value of the PSF. The commissioner may reduce the multiplier to maintain the AAA credit rating of the BGP. Changes to the multiplier made by the commissioner are to be ratified or rejected by the State Board of Education (SBOE) at the next meeting for which the item can be posted.

(5) The SBOE [State Board of Education (SBOE)] will establish an amount of capacity to be held in reserve of no less than 5.0% of the fund's capacity. Guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds, as determined by subtracting the amount to be held in reserve from the total available capacity. The reserved capacity can be used to award guarantees for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in the TEC, §44.031(h).

(A) The amount to be held in reserve may be increased by a majority vote of the SBOE based on changes in the asset allocation and risk in the portfolio and unrealized gains in the portfolio, or by the commissioner as necessary to prudently manage fund capacity. Changes to the amount held in reserve made by the commissioner are to be ratified or rejected by the SBOE at the next meeting for which the item can be posted.

(B) Guarantees will be awarded to applicants based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which

the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process.

(6) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(7) Each district that submits a valid application will be notified of the application status within 15 [ten] business days of the [end of the month following the] application deadline. If a district is awarded initial approval for the guarantee or initial and final approval for the guarantee, as applicable, as described in subsection (e) [(e)(2)] of this section, the following requirements must be met.

(A) If applicable, the [The] district must comply with the provisions for final approval described in subsection (e)(4) [(e)(3)] of this section to maintain approval for the guarantee.

(B) The bonds must be approved by the Office of the Attorney General within 180 [120] days of the date of the letter granting the approval of the guarantee. The initial approval for the guarantee or initial and final approval for the guarantee, as applicable, will expire at the end of the 180-day [120-day] period. The commissioner may extend the 180-day [120-day] period, based on extraordinary circumstances, on [upon] receiving a written request from the district before [prior to] the expiration of the 180-day [120-day] period.

(8) If a district does not receive a guarantee or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may reapply in a subsequent month. Applications that were denied a guarantee will not be retained for consideration in subsequent months.

(9) If the bonds are not approved by the Office of the Attorney General within 180 [120] days of the date of the letter granting the approval of the guarantee, the commissioner will consider the application withdrawn, and the district must reapply for a guarantee.

(10) Districts may not represent the bonds as guaranteed for the purposes of pricing or marketing the bonds before [prior to] the date of the letter granting approval of the guarantee.

(e) Application for the guarantee.

(1) Application process. Districts must apply to the commissioner of education for the guarantee or the credit enhancement of eligible bonds. The district must submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. [The application must be accompanied by a fee to be set by the commissioner and approved by the SBOE.]

(A) The application fee is \$2,300.

(B) [(A)] The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.

(C) [(B)] The fee will not be refunded to a district that:

(i) is not approved for the guarantee or the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(D) ~~[(C)]~~ The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its ~~[initial]~~ approval for the guarantee or the credit enhancement.

(2) Initial and final approval provisions.

(A) If, during the monthly estimation of PSF capacity described in subsection (d)(4) of this section, the commissioner determines that the available capacity of the PSF is 10% or less, the commissioner may require an applicant school district to obtain final approval for the guarantee as described in paragraph (4) of this subsection.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (3) of this subsection as both the initial and final approval; and

(ii) an applicant school district that has received notification of initial approval for the guarantee, as described in paragraph (3) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(3) ~~[(2)]~~ Initial approval. [Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:]

(A) Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

(II) if the district's accreditation status is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §45.0031 and §45.005.

(B) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and will provide an applicant district whose application has received initial approval for the guarantee written notice of initial approval.

~~[(A) the purpose of the bond issue;]~~

~~[(B) the district's accreditation status as defined by §97.1055 of this title in accordance with the following:]~~

~~[(i) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;]~~

~~[(ii) if the district's accreditation status is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or]~~

~~[(iii) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;]~~

~~[(C) the district's compliance with statutes and rules of the Texas Education Agency (TEA); and]~~

~~[(D) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §45.0031 and §45.005.]~~

(4) ~~[(3)]~~ Final approval. The provisions of this paragraph apply only as described in paragraph (2) of this subsection. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.

(A) A district that has received initial approval must provide a written notice to the TEA two working days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an agenda item on a meeting of the school board of trustees to approve the bond sale no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.

(C) The TEA will process requests for final approval from districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.



(D) A district may provide written notification as required by this paragraph by facsimile transmission or by electronic mail in a manner prescribed by the commissioner.

(f) Limitations on access to the guarantee.

(1) The following limitations apply to bonds for which the election authorizing the issuance of bonds was called after July 15, 2004.

(2) The commissioner will limit approval of the guarantee to a district that has, at the time of the application for the guarantee, less than the amount of annual debt service per ADA that represents the 90th percentile of annual debt service per ADA for all districts, as determined by the commissioner annually, or less than the amount of total debt service per ADA that represents the 90th percentile of total debt service per ADA for all districts, as determined by the commissioner annually [with less than \$1,650 of annual debt service per student in ADA at the time of the application for a guarantee]. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(7) of this section, of [that is] at least 25% [higher than the enrollment reported five years earlier], based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section. The total debt service amount is the amount defined by subsection (b)(11) of this section.

(3) The eligibility of bonds to receive the guarantee is limited to those new money, refunding, and combination issues as defined in subsection (b)(8), (10), and (6), respectively, [subsection (b)(4)-(6)] of this section.

(g) Allocation of specific holdings. If necessary to successfully operate the BGP [guarantee program], the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(h) Defeasance [Defeasement]. The guarantee will be completely removed when bonds guaranteed by the BGP [this program] are defeased, and such a provision must be specifically stated in the bond resolution. If bonds guaranteed by the BGP [this program] are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(i) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(j) Bonds guaranteed before December 1 [34], 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(k) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(l) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.

(m) Guarantee restrictions. The guarantee provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(n) Notice of default. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before maturity date, notify the commissioner.

(o) Payment from PSF.

(1) Immediately after the commissioner receives the notice described in subsection (n) of this section, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the PSF.

(3) Following full reimbursement to the PSF with interest, the comptroller will further cancel the bond or coupon and forward it to the school district for which payment was made. The interest rate will be based on the treasury pool rates published by the comptroller of public accounts.

(p) Bonds not accelerated on default. If a school district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's default.

(q) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the school district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(r) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the

commissioner will take action in accordance with the provisions of the TEC, §45.062.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001407

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER B. ADULT BASIC AND SECONDARY EDUCATION

The State Board of Education (SBOE) proposes amendments to §§89.21-89.23, 89.28, and 89.29, new §§89.30-89.35, and the repeal of §§89.30-89.33, concerning adult basic and secondary education. The sections establish provisions for the adult education program delivery system. The proposed rule actions would reflect changes resulting from the General Appropriations Act, Senate Bill (SB) 1, Article III, Rider 46, 81st Texas Legislature, 2009.

On June 19, 2009, the Governor signed the General Appropriations Act (SB 1), which then became effective on September 1, 2009. SB 1 requires that a new funding formula be allocated based on need for persons beyond the age of compulsory attendance who have not received a high school diploma and paid based on student performance and contact hours. Statutory authority for rule action relating to adult education remains with the SBOE.

As a result of the changes set forth under SB 1, Article III, Education, Rider 46, Adult Education, 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter B, Adult Basic and Secondary Education, must be revised to reflect these changes and to ensure that adult education providers are in compliance with new procedural and reporting requirements. The proposed revisions to 19 TAC Chapter 89, Subchapter B, would amend or repeal existing rules and add new rules to reflect changes resulting from the General Appropriations Act, including the following.

Rules relating to definitions, use of funds, essential program components, and the advisory committee would be amended to incorporate updates, clarifications, and additional specifications.

Rules relating to tuition and fees, allowable and nonallowable expenditures, staff development and special projects, and evaluation of programs would be repealed and proposed as new rules, with no changes, in order to reorganize the subchapter to accommodate the new funding rules.

New rules would be added to address the new funding structure to be implemented beginning with school year 2010-2011, including allocation of funds, payment of funds, and match requirements.

New rules would also be added to establish provisions relating to potential grantees, revocation, and recovery of funds.

The proposed revisions were developed in consultation with adult education stakeholders. Two conference calls occurred between the Texas Education Agency (TEA) staff and adult education stakeholders in October 2009.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the proposed rule actions are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.

Ms. Knaggs has determined that for each year of the first five years the proposed rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions would be a new funding formula for adult education service providers to be allocated based on need for persons beyond the age of compulsory attendance who have not received a high school diploma and paid on student performance and contact hours. The benefits realized would be services to persons in greater need as well as encouraging increased performance from service providers. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed rule actions submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

#### 19 TAC §§89.21 - 89.23, 89.28 - 89.35

The amendments and new sections are proposed under the Texas Education Code, §7.102(c)(16) and §29.253, which authorize the SBOE to adopt rules for adult education programs. The General Appropriations Act, Senate Bill 1, Article III, Rider 46, 81st Texas Legislature, 2009, requires that a new funding formula be allocated based on need for persons beyond the age of compulsory attendance who have not received a high school diploma and paid based on student performance and contact hours.

The amendments and new sections implement the Texas Education Code, §7.102(c)(16) and §29.253, and the General Appropriations Act, Senate Bill 1, Article III, Rider 46, 81st Texas Legislature, 2009.

#### §89.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Adult education--Basic and secondary instruction and services for adults.

(A) Adult basic education--Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who: ~~[have minimal competence in reading, writing, and solving quantitative problems; are not sufficiently competent to speak, read, or write the English language; or are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.]~~

~~(i) have minimal competence in reading, writing, and solving quantitative problems;~~

~~(ii) are not sufficiently competent to speak, read, or write the English language; or~~

~~(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.~~

(B) Adult secondary education--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(2) Base allocation--An amount of funds set aside for each grantee to provide adult basic education services to eligible adults within its service area in compliance with provisions of the grant application and the state's federally-approved adult education plan.

(3) ~~[(2)]~~ Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

~~[(A) The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.]~~

(A) ~~[(B)]~~ Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

(B) Student contact hour is 60 minutes.

~~[(3) Student contact hour--60 minutes.]~~

(4) Cooperative/consortium adult education program--A community or area partnership of educational, work force development, human service entities, and other agencies that agree to collaborate for the provision of adult education and literacy services.

(5) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in state and federal law.

~~[(5) Fiscal agent--The local entity that serves as the contracting agent for an adult education program.]~~

(6) Fiscal agent--The local entity that applies for, receives, and manages funds on behalf of the cooperative or adult education partnership.

~~[(6) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in statutes.]~~

(7) Grantee--Recipient of award of federal and/or state adult education funds from the Texas Education Agency.

(8) Performance definitions--

(A) Allocation--A performance allocation is an amount of funds set aside for each grantee from which it is eligible to withdraw funds once it has demonstrated that it has met or exceeded set performance targets.

(B) Payment--A performance payment is a financial incentive awarded to grantees based on the number of performance points earned by meeting or exceeding identified federal and state performance targets.

(C) Points--Performance points are the basis by which the grantee can earn performance payments. Performance points are earned by grantees by meeting or exceeding state and federal performance targets.

(D) Target--A performance target is a quantifiable measurement that identifies the degree or extent to which grantees are expected to achieve performance measures.

(i) Federal targets--A quantifiable measurement assigned to individual federal performance measures set forth in the Texas plan for adult education approved by the United States Department of Education (USDE).

(ii) State targets--A quantifiable measurement assigned to individual state performance measures set forth in the Texas plan for adult education approved by the USDE.

(9) Reallocation fund--Monies from grantee's performance allocations that grantees fail to earn because they did not achieve all federal performance targets that are placed in a fund to be distributed among grantees based on their performance on state performance measures.

§89.22. Use of Funds.

(a) Federal adult education and literacy funds may be used for programs of adult education and literacy for out-of-school individuals who have attained 16 years of age and:

(1) function at less than a secondary school completion level;

(2) lack a secondary school credential; or

(3) are unable to speak, read, or write in English.

(b) State adult ~~[Adult]~~ education and literacy funds are to be used for programs of adult education and literacy for out-of-school individuals ~~[persons]~~ who are beyond compulsory school attendance age and: ~~[who function at less than a secondary school completion level or who lack a secondary school credential.]~~

(1) function at less than a secondary school completion level;

(2) lack a secondary school credential; or

(3) are unable to speak, read, or write in English.

(c) The proportion of students served who meet the requirements of subsection (a) of this section but do not meet the requirements of subsection (b) of this section may not exceed the grantee's percentage of federal funds to the total allocation.

§89.23. Essential Program Components.

The following essential program components shall be provided:

(1) adult basic education;

(2) programs for adults of limited English proficiency;

(3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/or a high school diploma;

(4) instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment; ~~and~~

(5) assessment and guidance services related to paragraphs (1)-(4) of this section; ~~and~~ [-]

(6) collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

*§89.28. Advisory Committee.*

At least one collaborative advisory committee shall be formed in each funded adult education ~~service area~~ ~~[program]~~. That committee shall be composed of a broad spectrum of community representatives, including work force development representatives, to review the activities of[-] and make recommendations to[-] the fiscal agent in planning, developing, and evaluating the adult education program. The fiscal agent shall be responsible for convening the collaborative advisory committee at least twice each year.

*§89.29. Allocation of Funds Prior to School Year 2010-2011.*

(a) The provisions of this section apply to the allocation of state and federal adult education funds prior to school year 2010-2011. Allocations beginning with school year 2010-2011 shall be in accordance with provisions established in §89.30 of this title (relating to Allocation of Funds Beginning with School Year 2010-2011) and §89.31 of this title (relating to Payment of Funds).

(b) Annually, after federal adult education and literacy funds have been set aside for state administration, special projects and staff development, state and federal adult education fund allocations shall be developed for each county and each school district geographic area. Allocations shall be computed as follows.

(1) Twenty-five percent of the funds available shall be allocated based on the best available estimates of the number of eligible adults in each county and school district geographic area within each county.

(2) Seventy-five percent of the funds available shall be allocated based on student contact hours reported by each school district geographic area and for the most recent complete fiscal year reporting period.

(3) A school district geographic area's student contact hour annual allocation shall not be reduced by more than 10% below the preceding fiscal year's contact hour allocation provided that:

(A) sufficient funds are available; and

(B) the school district geographic area's contact hour performance used in calculating the allocation was not less than that of the preceding fiscal year.

(4) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim only the proportionate share of the student contact time based on the adult education program's expenditures for the instructional program.

*§89.30. Allocation of Funds Beginning with School Year 2010-2011.*

(a) Allocation of state and federal funds. The provisions of this section apply to the allocation of state and federal adult education

funds beginning with school year 2010-2011. Annually, after federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds shall be allocated based upon grantees':

(1) funding received in the second year of the previous biennium; and

(2) proportionate share of need.

(b) Total grantee allocation. Each grantee's total shall be comprised of the following components:

(1) base allocation; and

(2) performance allocation.

(c) Calculation of base allocation. Each grantee will receive a base allocation equal to the amount of funding it received in the second year of the previous biennium, provided that:

(1) the grantee serves, at a minimum, the same or equivalent school district geographic areas as it served in the second year of the previous biennium; and

(2) the total amount of federal and state funds available statewide is equal to or greater than the amount available in the second year of the previous biennium.

(d) Reduction of base allocation. If the calculation of the base allocation results in a total that is greater than the state and federal funds available, each grantee's base allocation shall be reduced proportionately.

(e) Calculation of performance allocation. The sum of all grantees' base allocations, which are calculated based on subsection (c) of this section, will be subtracted from the total amount of federal and state funds available, excluding the amount of federal funds set aside for state administration, special projects, staff development, and leadership. The remainder then will be allocated among all grantees based upon need and will be designated as each grantee's performance allocation.

*§89.31. Payment of Funds.*

(a) Base payments. Each grantee will receive its base allocation as calculated in accordance with §89.30(c) of this title (relating to Allocation of Funds Beginning with School Year 2010-2011).

(b) Performance payments. Each grantee may earn performance payments from:

(1) its performance allocation as calculated in accordance with §89.30(e) of this title by achieving federal performance targets; and

(2) the reallocation fund by achieving state performance targets.

(c) Earning payments from a grantee's performance allocation. Each grantee is eligible to earn performance payments from its performance allocation by meeting or exceeding federal performance targets.

(1) For each federal performance target that the grantee meets or exceeds, the grantee will earn:

(A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and

(B) one performance point for meeting or exceeding all other targets.

(2) The amount of funds that each grantee will receive from its performance allocation is calculated by adding the number of performance points the grantee earned and dividing it by the total number of performance points possible to earn and multiplying that number by 100. The resulting percentage of possible points earned is then multiplied by the amount of funds set aside in the grantee's performance allocation.

(3) The amount of funds in each grantee's performance allocation that are not earned will be placed in a statewide reallocation fund.

(d) Earning payments from the reallocation fund. All grantees, regardless of performance on the federal performance measures, will be eligible to earn funds from the reallocation fund by meeting or exceeding state performance targets for state performance measures.

(1) For each state performance target that a grantee meets or exceeds, the grantee will earn:

(A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and

(B) one performance point for meeting or exceeding all other targets.

(2) The total number of performance points earned by all grantees will be summed and divided into the total amount of funds in the reallocation fund to determine a cost per state performance point earned.

(3) The amount of funds that each grantee will receive from the reallocation fund is calculated by adding the number of performance points the grantee earned for meeting or exceeding state performance targets and multiplying that number by the cost per state performance point earned.

#### §89.32. Match Requirements.

(a) Service providers shall provide and document any cash or in-kind match. The match must be met using non-federal (i.e., local or state) sources.

(b) The cash or in-kind match may be obtained from any state or local source that is fairly evaluated, excluding any sources of federal funds.

(c) The match may include allowable costs such as the following:

(1) goods and services;

(2) fair market value of third-party goods and services donated by volunteers and employees or other organizations; and

(3) supplies, equipment, and building space not owned by the fiscal agent.

(d) The grantee is required to maintain auditable records for all expenditures relating to the cash or in-kind match the same as for the funds granted through an approved application.

(e) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim a proportionate share of the student contact time as the cash or in-kind match.

#### §89.33. Tuition and Fees.

(a) No student tuition or fees shall be charged for adult basic education as a condition for membership and participation in a class.

(b) Tuition and fees for adult secondary education may be charged and be established by local fiscal agent board policy. Funds generated by such tuition and fees shall be used for the adult education instructional program.

#### §89.34. Other Provisions.

(a) Allowable and nonallowable expenditures. Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.

(b) Staff development and special projects.

(1) Priorities for expenditures of federal funds as required by the Workforce Investment Act, §223, shall be presented annually to the State Board of Education.

(2) From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.

(c) Evaluation of programs. The Texas Education Agency shall evaluate adult education programs based on the indicators of program quality for adult education.

#### §89.35. Revocation and Recovery of Funds.

(a) The commissioner of education may revoke a grant award for the adult education grant program based on the following factors:

(1) noncompliance with application assurances and/or the provisions of this section;

(2) lack of program success as evidenced by progress reports and program data;

(3) failure to participate in data collection and audits;

(4) failure to meet performance standards specified in the application or in the Texas state plan for adult education approved by the U.S. Department of Education; or

(5) failure to provide accurate, timely, and complete information as required by the Texas Education (TEA) to evaluate the effectiveness of the adult education program.

(b) A decision by the commissioner and the TEA to revoke the grant award of an adult education program is final and may not be appealed.

(c) The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001408

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



#### **19 TAC §§89.30 - 89.33**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of*

*the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(16) and §29.253, which authorize the SBOE to adopt rules for adult education programs. The General Appropriations Act, Senate Bill 1, Article III, Rider 46, 81st Texas Legislature, 2009, requires that a new funding formula be allocated based on need for persons beyond the age of compulsory attendance who have not received a high school diploma and paid based on student performance and contact hours.

The repeals implement the Texas Education Code, §7.102(c)(16) and §29.253, and the General Appropriations Act, Senate Bill 1, Article III, Rider 46, 81st Texas Legislature, 2009.

§89.30. *Tuition and Fees.*

§89.31. *Allowable and Nonallowable Expenditures.*

§89.32. *Staff Development and Special Projects.*

§89.33. *Evaluation of Programs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001409

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## CHAPTER 105. FOUNDATION SCHOOL PROGRAM

### SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE AID ENTITLEMENTS

The Texas Education Agency proposes the repeal of §105.1011 and §105.1012, concerning state aid entitlements. Section 105.1011 specifies definitions, requirements, and procedures for distribution of the Foundation School Fund for the 1999-2000 and 2000-2001 school years. Section 105.1012 establishes provisions for implementation of additional state aid for professional staff salaries. The proposed repeal of §105.1011 is necessary because of the expiration of the section and of its authorizing statute, the Texas Education Code (TEC), §42.253(e-2), as added by Senate Bill (SB) 4, 76th Texas Legislature, 1999. The proposed repeal of §105.1012 is necessary because of the repeal of its authorizing statute, the TEC, §42.2512.

The TEC, §42.253(e-2), as added by SB 4, 76th Texas Legislature, 1999, authorized the commissioner of education to adopt rules for computing a certain limit on school district tax rates for the purpose of calculating the districts' state aid entitlements, as described by the TEC, §42.253(e-1), as added by SB 4, 76th Texas Legislature, 1999. The provisions applied for the 1999-2000 and 2000-2001 school years. The commissioner exercised rulemaking authority to adopt 19 TAC §105.1011, Distribution of Foundation School Fund, effective November 7, 1999.

The TEC, §42.253(e-2), as added by SB 4, 76th Texas Legislature, 1999, specified an expiration date of September 1, 2001,

for subsections (e-1) and (e-2). In addition, 19 TAC §105.1011(b) specifies an expiration date of September 1, 2001, for the section in alignment with statute.

The proposed repeal of 19 TAC §105.1011 would repeal a section that has expired and whose statutory authorization has expired.

The TEC, §42.2512(c), authorized the commissioner to adopt rules for the provision of aid known as additional state aid for professional staff salaries. The commissioner exercised rule-making authority to adopt 19 TAC §105.1012, Additional State Aid for Professional Staff Salaries, effective November 7, 1999.

HB 3646, 81st Texas Legislature, 2009, made amendments to the TEC, §42.2516, Additional State Aid for Tax Reduction, which incorporated the funding previously delivered in a separate allotment for the state aid authorized under the TEC, §42.2512. Accordingly, the TEC, §42.2512, was repealed. Instead, state aid for professional staff salaries will be included as part of a larger funding payment.

The proposed repeal of 19 TAC §105.1012 would repeal a section whose authorizing statute has been repealed.

The proposed repeals would have no procedural and reporting implications. The proposed repeals would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/financial officer, has determined that for the first five-year period the repeals are in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeals.

Ms. Beaulieu has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals would be the reflection of statutory changes and the removal of obsolete provisions from rule. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 2, 2010, and ends May 3, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 2, 2010.

#### 19 TAC §105.1011

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under the TEC, §42.253(e-2), as added by SB 4, 76th Texas Legislature, 1999, which authorized the commissioner of education to adopt rules for computing a certain limit on school district tax rates for the purpose of calculating the

districts' state aid entitlements for the 1999-2000 and 2000-2001 school years. The TEC, §42.253(e-2), as added by SB 4, 76th Texas Legislature, 1999, expired effective September 1, 2001.

The repeal implements the TEC, §42.253(e-2), as added by SB 4, 76th Texas Legislature, 1999.

*§105.1011. Distribution of Foundation School Fund.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001405

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## 19 TAC §105.1012

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under the TEC, §42.2512(c), which authorized the commissioner of education to adopt rules to implement additional state aid for professional staff salaries. HB 3646, 81st Texas Legislature, 2009, repealed the TEC, §42.2512, and incorporated the funding into the TEC, §42.2516, Additional State Aid for Tax Reduction.

The repeal implements the repeal of the TEC, §42.2512.

*§105.1012. Additional State Aid for Professional Staff Salaries.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001413

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

### SUBCHAPTER D. OTHER HIGH SCHOOL MATHEMATICS COURSES

#### 19 TAC §§111.52, 111.60, 111.61

The State Board of Education (SBOE) proposes amendments to §111.52 and §111.60 and new §111.61, concerning Texas essential knowledge and skills (TEKS) for mathematics. The sections establish the TEKS for other courses that count for high school mathematics credit. The proposed rule actions would add

new Career and Technical Education (CTE) courses to the list of courses that count for high school mathematics credit.

In January 2010, the SBOE approved for second reading and final adoption amendments to the graduation requirements in 19 TAC Chapter 74, Subchapter F, that allow Mathematical Applications in Agriculture, Food, and Natural Resources; Engineering Mathematics; and Statistics and Risk Management to count for the third mathematics credit under the Minimum High School Program. Additionally, Mathematical Applications in Agriculture, Food, and Natural Resources may count as a third mathematics credit under the Recommended High School Program if taken prior to Algebra II. The amendments to 19 TAC Chapter 74, Subchapter F, also allow Engineering Mathematics and Statistics and Risk Management to count for the fourth mathematics credit under the Recommended High School Program and the Distinguished Achievement Program.

The proposed revisions to 19 TAC Chapter 111, Subchapter D, would add proposed new 19 TAC §111.61, Other Courses for Which Students May Receive Mathematics Credit, to include the new CTE courses that count for mathematics credit. The proposed new rule would also add an additional Advanced Placement course for mathematics credit. The proposed rule actions would also amend §111.52, Independent Study in Mathematics (One-Half to One Credit), and §111.60, Concurrent Enrollment in College Courses, to include technical edits to update the rules.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed rule actions are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.

Ms. Givens has determined that for each year of the first five years the proposed rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions would include added flexibility for students regardless of the high school graduation program they select. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed rule actions submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments and new section are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to

by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendments and new section implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

*§111.52. Independent Study in Mathematics (One-Half to One Credit).*

(a) General requirements. Students can be awarded one-half to one credit for successful completion of Independent Study in Mathematics. Required prerequisites: Algebra II, Geometry. Students may repeat this course with different course content for up to three credits [a second credit].

(b) Content requirements. Students will extend their mathematical understanding beyond the Algebra II level in a specific area or areas of mathematics, such as theory of equations, number theory, non-Euclidean geometry, advanced survey of mathematics, or history of mathematics. The requirements for each course must be approved by the local district before the course begins.

(c) If this course is being used to satisfy requirements for the Distinguished Achievement Program, student research/products must be presented before a panel of professionals or approved by the student's mentor.

*§111.60. Concurrent Enrollment in College Courses.*

(a) General requirements. Students shall be awarded at least one-half credit for each semester of successful completion of a college course in which the student is concurrently enrolled while in high school.

(b) Content requirements. In order for students to receive state graduation credit for concurrent enrollment courses, content requirements must meet or exceed the essential knowledge and skills in a given course.

*§111.61. Other Courses for Which Students May Receive Mathematics Credit.*

(a) Mathematical Applications in Agriculture, Food, and Natural Resources. Students on the minimum high school program or recommended high school program shall be awarded one credit in mathematics for successful completion of this course as described in §130.10 of this title (relating to Mathematical Applications in Agriculture, Food, and Natural Resources (One Credit)) and in accordance with the graduation requirements in Chapter 74 of this title (relating to Curriculum Requirements). Recommended prerequisite: a minimum of one credit from the courses in the Agriculture, Food, and Natural Resources cluster.

(b) Engineering Mathematics. Students shall be awarded one credit in mathematics for successful completion of this course as described in §130.367 of this title (relating to Engineering Mathematics (One Credit)). Prerequisite: Algebra II. This course is recommended for students in Grades 11 and 12.

(c) Statistics and Risk Management. Students shall be awarded one credit in mathematics for successful completion of this course as described in §130.169 of this title (relating to Statistics and Risk Management (One Credit)). Recommended prerequisites: Accounting I and Algebra II. This course is recommended for students in Grades 11 and 12.

(d) Advanced Placement (AP) Computer Science A. Students may be awarded one mathematics credit for successful completion of this course. Content requirements for Advanced Placement (AP) Computer Science A are prescribed in the College Board Publication Ad-

vanced Placement Course Description: Computer Science A, published by The College Board. This publication may be obtained from the College Board Advanced Placement Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001410

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE SUBCHAPTER D. OTHER SCIENCE COURSES

The State Board of Education (SBOE) proposes the repeal of §112.71 and new §112.71 and §112.72, concerning Texas essential knowledge and skills (TEKS) for science. The sections establish the TEKS for other courses that count for high school science credit. The proposed rule actions would add new Career and Technical Education (CTE) courses to the list of courses that count for high school science credit. The proposed rule actions would also include minor modifications to the Principles of Technology course that may satisfy the physics graduation requirement to align with end-of-course assessment requirements.

In January 2010, the SBOE approved for second reading and final adoption amendments to the graduation requirements in 19 TAC Chapter 74, Subchapter F, that allow Advanced Animal Science, Advanced Biotechnology, Advanced Plant and Soil Science, Food Science, and Forensic Science to count for the fourth science credit under the Recommended High School Program and the Distinguished Achievement Program.

The proposed revisions to 19 TAC Chapter 112, Subchapter D, would add proposed new 19 TAC §112.72, Other Courses for Which Students May Receive Science Credit, to include the new CTE courses that count for science credit. The proposed new rule would also include technical edits to update the provisions. Current 19 TAC §112.71 would be superseded by proposed new 19 TAC §112.71 and, therefore, proposed for repeal.

In addition, due to requirements for end-of-course assessments for physics, minor modifications are needed to the TEKS for the new CTE Principles of Technology course. The proposed revisions to 19 TAC Chapter 112, Subchapter D, would add new 19 TAC §112.71, Principles of Technology (One Physics Credit), to include the modified TEKS for Principles of Technology that would count for physics credit.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed rule actions are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.



Ms. Givens has determined that for each year of the first five years the proposed rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions would include added flexibility for students regardless of the high school graduation program they select. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed rule actions submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

## 19 TAC §112.71

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The repeal implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§112.71. *Other Courses for which Students May Receive Science Credit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001411

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## 19 TAC §112.71, §112.72

The new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate

grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§112.71. *Principles of Technology (One Physics Credit).*

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisites: one unit of high school science and Algebra I. To receive credit in science, students must meet the 40% laboratory and fieldwork requirement identified in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(b) Introduction.

(1) Principles of Technology. In Principles of Technology, students conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Various systems will be described in terms of space, time, energy, and matter. Students will study a variety of topics that include laws of motion, conservation of energy, momentum, electricity, magnetism, thermodynamics, and characteristics and behavior of waves. Students will apply physics concepts and perform laboratory experimentations for at least 40% of instructional time using safe practices.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) Scientific systems. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) The student uses a systematic approach to answer scientific laboratory and field investigative questions. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) design and implement investigative procedures, including making observations, asking well-defined questions, formulating testable hypotheses, identifying variables, selecting appropriate equipment and technology, and evaluating numerical answers for reasonableness;

(F) demonstrate the use of course apparatus, equipment, techniques, and procedures, including multimeters (current, voltage, resistance), triple beam balances, batteries, clamps, dynamics demonstration equipment, collision apparatus, data acquisition probes, discharge tubes with power supply (H, He, Ne, Ar), hand-held visual spectrometers, hot plates, slotted and hooked lab masses, bar magnets, horseshoe magnets, plane mirrors, convex lenses, pendulum support, power supply, ring clamps, ring stands, stopwatches, trajectory apparatus, tuning forks, carbon paper, graph paper, magnetic compasses, polarized film, prisms, protractors, resistors, friction blocks, mini lamps (bulbs) and sockets, electrostatics kits, 90-degree rod clamps, metric rulers, spring scales, knife blade switches, Celsius thermometers, meter sticks, scientific calculators, graphing technology, computers, cathode ray tubes with horseshoe magnets, ballistic carts or equivalent, resonance tubes, spools of nylon thread or string, containers of iron filings, rolls of white craft paper, copper wire, Periodic Table, electromagnetic spectrum charts, slinky springs, wave motion ropes, and laser pointers;

(G) use a wide variety of additional course apparatus, equipment, techniques, materials, and procedures as appropriate such as ripple tank with wave generator, wave motion rope, micrometer, caliper, radiation monitor, computer, ballistic pendulum, electroscope, inclined plane, optics bench, optics kit, pulley with table clamp, resonance tube, ring stand screen, four-inch ring, stroboscope, graduated cylinders, and ticker timer;

(H) make measurements with accuracy and precision and record data using scientific notation and International System (SI) units;

(I) identify and quantify causes and effects of uncertainties in measured data;

(J) organize and evaluate data and make inferences from data, including the use of tables, charts, and graphs;

(K) communicate valid conclusions supported by the data through various methods such as lab reports, labeled drawings,

graphic organizers, journals, summaries, oral reports, and technology-based reports; and

(L) express and manipulate relationships among physical variables quantitatively, including the use of graphs, charts, and equations.

(3) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) explain the impacts of the scientific contributions of a variety of historical and contemporary scientists on scientific thought and society;

(E) research and describe the connections between physics and future careers; and

(F) express and interpret relationships symbolically in accordance with accepted theories to make predictions and solve problems mathematically, including problems requiring proportional reasoning and graphical vector addition.

(4) The student uses the scientific process to investigate physical concepts. The student is expected to:

(A) understand that scientific hypotheses are tentative and testable statements that must be capable of being supported by observational evidence;

(B) understand that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers;

(C) design and implement investigative procedures;

(D) demonstrate the appropriate use and care of laboratory equipment;

(E) demonstrate accurate measurement techniques using precision instruments;

(F) record data using scientific notation and International System (SI) of units;

(G) identify and quantify causes and effects of uncertainties in measured data;

(H) organize and evaluate data, including the use of tables, charts, and graphs;

(I) communicate conclusions supported through various methods such as laboratory reports, labeled drawings, graphic organizers, journals, summaries, oral reports, or technology-based reports; and

(J) record, express, and manipulate data using graphs, charts, and equations.

(5) The student demonstrates appropriate safety techniques in the field and laboratory environments. The student is expected to:

(A) master relevant safety procedures;

(B) follow safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes; and

(D) make prudent choices in the conservation and use of resources and the disposal of hazardous materials and wastes appropriately.

(6) The student uses critical-thinking, scientific-reasoning, and problem-solving skills. The student is expected to:

(A) analyze and evaluate scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing;

(B) communicate and apply scientific information;

(C) explain the societal impacts of scientific contributions; and

(D) research and describe the connections between technologies and future career opportunities.

(7) The student describes and applies the laws governing motion in a variety of situations. The student is expected to:

(A) generate and interpret relevant equations using graphs and charts for one- and two-dimensional motion, including:

(i) using and describing one-dimensional equations for displacement, distance, speed, velocity, average velocity, acceleration, and average acceleration;

(ii) using and describing two-dimensional equations for projectile and circular motion; and

(iii) using and describing vector forces and resolution;

(B) describe and calculate the effects of forces on objects, including law of inertia and impulse and conservation of momentum;

(C) develop and interpret free-body force diagrams; and

(D) identify and describe motion relative to different frames of reference.

(8) The student describes the nature of forces in the physical world. The student is expected to:

(A) research and describe the historical development of the concepts of gravitational, electromagnetic, weak nuclear, and strong nuclear forces;

(B) describe and calculate the magnitude of gravitational forces between two objects;

(C) describe and calculate the magnitude of electrical forces;

(D) describe the nature and identify everyday examples of magnetic forces and fields;

(E) describe the nature and identify everyday examples of electromagnetic forces and fields;

(F) characterize materials as conductors or insulators based on their electrical properties;

(G) design and construct both series and parallel circuits and calculate current, potential difference, resistance, and power of various circuits;

(H) investigate and describe the relationship between electric and magnetic fields in applications such as generators, motors, and transformers; and

(I) describe technological applications of the strong and weak nuclear forces in nature.

(9) The student describes and applies the laws of the conservation of energy and momentum. The student is expected to:

(A) describe the transformational process between work, potential energy, and kinetic energy (work-energy theorem);

(B) use examples to analyze and calculate the relationships among work, kinetic energy, and potential energy;

(C) describe and calculate the mechanical energy of, the power generated within, the impulse applied to, and the momentum of a physical system; and

(D) describe and apply the laws of conservation of energy and conservation of momentum.

(10) The student analyzes the concept of thermal energy. The student is expected to:

(A) describe how the macroscopic properties of a thermodynamic system such as temperature, specific heat, and pressure are related to the molecular level of matter, including kinetic or potential energy of atoms;

(B) contrast and give examples of different processes of thermal energy transfer, including conduction, convection, and radiation; and

(C) analyze and explain technological examples such as solar and wind energy that illustrate the laws of thermodynamics, including the law of conservation of energy and the law of entropy.

(11) The student analyzes the properties of wave motion and optics. The student is expected to:

(A) examine and describe oscillatory motion and wave propagation in various types of media;

(B) investigate and analyze characteristics of waves, including velocity, frequency, amplitude, and wavelength;

(C) investigate and calculate the relationship between wavespeed, frequency, and wavelength;

(D) compare and contrast the characteristics and behaviors of transverse waves, including electromagnetic waves and the electromagnetic spectrum, and longitudinal waves, including sound waves;

(E) investigate behaviors of waves, including reflection, refraction, diffraction, interference, resonance, and the Doppler effect;

(F) describe and predict image formation as a consequence of reflection from a plane mirror and refraction through a thin convex lens; and

(G) describe the role of wave characteristics and behaviors in medical and industrial technology applications.

(12) The student analyzes the concepts of atomic, nuclear, and quantum phenomena. The student is expected to:

(A) describe the photoelectric effect and the dual nature of light;

(B) compare and explain emission spectra produced by various atoms;

(C) describe the significance of mass-energy equivalence and apply it in explanations of phenomena such as nuclear stability, fission, and fusion;

(D) describe the role of mass-energy equivalence for areas such as nuclear stability, fission, and fusion; and

(E) explore technology applications of atomic, nuclear, and quantum phenomena such as nanotechnology, radiation therapy, diagnostic imaging, and nuclear power.

§112.72. Other Courses for Which Students May Receive Science Credit.

(a) Agriculture, Food, and Natural Resources courses.

(1) Advanced Animal Science. Students shall be awarded one credit in science for successful completion of this course as described in §130.7 of this title (relating to Advanced Animal Science (One Credit)). Recommended prerequisite: a minimum of one credit from the courses in the Agriculture, Food, and Natural Resources cluster. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 12.

(2) Advanced Plant and Soil Science. Students shall be awarded one credit in science for successful completion of this course as described in §130.21 of this title (relating to Advanced Plant and Soil Science (One Credit)). Recommended prerequisite: a minimum of one credit from the courses in the Agriculture, Food, and Natural Resources cluster. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 12.

(b) Health science courses.

(1) Anatomy and Physiology. Students shall be awarded one credit in science for successful completion of this course as described in §130.206 of this title (relating to Anatomy and Physiology (One Science Credit)). Recommended prerequisites: three credits of science. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grades 10-12.

(2) Medical Microbiology. Students shall be awarded one-half to one credit in science for successful completion of this course as described in §130.207 of this title (relating to Medical Microbiology (One-Half to One Science Credit)). Recommended prerequisites: three credits of science. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grades 10-12.

(3) Pathophysiology. Students shall be awarded one-half to one credit in science for successful completion of this course as described in §130.208 of this title (relating to Pathophysiology (One-Half to One Science Credit)). Recommended prerequisites: three credits of science. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 11 or 12.

(c) Hospitality and Tourism course. Food Science. Students shall be awarded one credit in science for successful completion of this

course as described in §130.230 of this title (relating to Food Science (One Credit)). Recommended prerequisite: Principles of Hospitality and Tourism. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 11 or 12.

(d) Law, Public Safety, Corrections, and Security course. Forensic Science. Students shall be awarded one credit in science for successful completion of this course as described in §130.295 of this title (relating to Forensic Science (One Credit)). Prerequisites: Biology and Chemistry. Recommended prerequisites: Principles of Law, Public Safety, Corrections, and Security and Law Enforcement I. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 11 or 12.

(e) Science, Technology, Engineering, and Mathematics courses.

(1) Advanced Biotechnology. Students shall be awarded one credit in science for successful completion of this course as described in §130.364 of this title (relating to Advanced Biotechnology (One Credit)). Recommended prerequisites: Biology and Chemistry. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 11 or 12.

(2) Scientific Research and Design. Students shall be awarded one credit in science for successful completion of this course as described in §130.372 of this title (relating to Scientific Research and Design (One Science Credit)). Prerequisite: one unit of high school science. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 11 or 12. Students may repeat this course with different course content for up to three credits.

(3) Engineering Design and Problem Solving. Students shall be awarded one credit in science for successful completion of this course as described in §130.373 of this title (relating to Engineering Design and Problem Solving (One Science Credit)). Prerequisites: Geometry, Algebra II, Chemistry, and Physics. Students must meet the 40% laboratory and fieldwork requirement in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum). This course is recommended for students in Grade 11 or 12.

(f) Concurrent enrollment in college courses.

(1) General requirements. Students shall be awarded at least one-half credit for each semester of successful completion of a college course in which the student is concurrently enrolled while in high school.

(2) Content requirements. In order for students to receive state graduation credit for concurrent enrollment courses, content requirements must meet or exceed the essential knowledge and skills in a given course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.  
TRD-201001412

◆ ◆ ◆

**CHAPTER 153. SCHOOL DISTRICT  
PERSONNEL  
SUBCHAPTER CC. COMMISSIONER'S  
RULES ON CREDITABLE YEARS OF SERVICE  
19 TAC §153.1021**

The Texas Education Agency (TEA) proposes an amendment to §153.1021, concerning recognition for creditable years of service. The section provides appropriate definitions and explains required documents, necessary credentials, and the service record. The proposed amendment would implement the requirements of House Bill (HB) 3646 and HB 1365, 81st Texas Legislature, 2009, and clarify the transferability of state days between certain entities and school districts. The proposed amendment would also incorporate clarifying and technical changes.

Effective February 1, 1998, the commissioner adopted 19 TAC §153.1021, Recognition of Creditable Years of Service, as authorized by the TEC, §21.403, 75th Texas Legislature, 1997. The provisions of law required the commissioner to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the state minimum salary schedule.

The existing rule concerning placement on the salary schedule applies only to classroom teachers, full-time librarians, full-time counselors, and full-time nurses. The rule details the provisions for creditable years of service, including recognized employing entities for service credit.

HB 3646, 81st Texas Legislature, 2009, established increases in the monthly salaries for certain professional staff for the 2009 - 2010 and 2010 - 2011 school years and included an increase for full-time speech pathologists. HB 1365, 81st Texas Legislature, 2009, added the TEC, §21.4031, which requires a school district that previously employed a teacher, librarian, counselor, or nurse to provide upon request the individual's service record to the next employing school district.

The proposed amendment to 19 TAC §153.1021, Recognition of Creditable Years of Service, would update and clarify existing provisions, as follows:

In subsection (a), relating to definitions, paragraph (12) would be modified to specify classroom teachers instead of teachers. This proposed change would state clearly in rule a requirement that has been in practice since initial adoption. New paragraph (18) would add a definition for speech pathologists pursuant to HB 3646, 81st Texas Legislature, 2009. The speech pathologist mandated pay raise will expire on September 1, 2011. Subsequent paragraphs would be reordered accordingly.

In subsection (d), relating to teacher service record, paragraph (8) would be modified to address state personal leave and to include Harris County Department of Education and Dallas County Schools; paragraph (9) would be added to clarify the potential purchase of state days for retirement purposes; and paragraph

(10) would be added to comply with the new mandate, enacted by HB 1365, 81st Texas Legislature, 2009, that districts provide service records to the TEA upon request. These proposed changes would provide clarification on the transferability of state days and the service record requirements.

In subsection (h), relating to requirements for entities recognized for professional personnel, paragraph (1)(A)(i) would be modified to specify classroom teachers instead of teachers; paragraph (7)(A) would be modified to specify that the requirement applies to private colleges and universities; and paragraph (16)(E) would be added to clarify military service requirements. These proposed changes would state clearly in rule requirements that have been in practice since initial adoption.

The proposed amendment would require school districts to submit school district personnel service records to the TEA upon request. The proposed amendment would have no new locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Mr. Booker has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule action will be clarification of terminology and requirements relating to recognition of creditable years of service for school district personnel. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 2, 2010, and ends May 3, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 2, 2010.

The amendment is proposed under the Texas Education Code, §21.403, which requires the commissioner of education to adopt rules for determining the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule. The TEC, §21.402, as amended by House Bill 3646, 81st Texas Legislature, 2009, established increases in the monthly salaries for certain professional staff for the 2009 - 2010 and 2010 - 2011 school years and included an increase for full-time speech pathologists. The TEC, §21.4031, as added by House Bill 1365, 81st Texas Legislature, 2009, requires a school district that previously employed a teacher, librarian, counselor, or nurse to provide the individual's service record upon request.

The amendment implements the Texas Education Code, §§21.402, 21.403, and 21.4031.

*§153.1021. Recognition of Creditable Years of Service.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accredited institution--A public or private elementary, secondary, or post-secondary institution whose education program has been evaluated and deemed accredited by a state department of education or recognized regional accrediting agency.

(2) Charter school--A charter school that has been authorized to operate under the Texas Education Code (TEC), Chapter 12, Subchapter D or E.

(3) Assignment--Refers to the actual duties a person has with a school district or other educational entity.

(4) Authorized leave--Leave granted under the state's former minimum sick leave program, leave granted under the state's current minimum personal leave program, (which includes physical assault leave), or any leave granted under a local leave policy for which the employee is paid as if on regular duty.

(5) Certificate--A document issued by the State Board for Educator Certification (SBEC) authorizing the holder to teach in the public elementary and secondary schools of Texas.

(6) Certified--Status of a person who holds a valid Texas teaching certificate.

(7) Contractual year--The employment period between July 1 and the following June 30.

(8) Current valid certificate--A certificate that is or was valid at a given time, including the stipulation that after June 30, 1986, a Texas certificate is valid only if the certified person has successfully passed any certification that was mandated by either the State Board of Education or the SBEC.

(9) Faculty status--Employment by a college or university as a member of the professional administrative or instructional staff, not as a graduate assistant, an assistant instructor, or an instructor on a fellowship.

(10) Full-time employment--Employment for 100% of an institution's normal work schedule.

(11) Full-time equivalency--The amount of time required of a staff member to perform a less than full-time assignment divided by the amount of time required in performing a corresponding full-time assignment. Full-time equivalency of assignment usually is expressed as a decimal fraction to the nearest tenth.

(12) Minimum salary--The minimum salary a classroom teacher, full-time librarian, full-time counselor, or full-time school nurse must be paid as prescribed in TEC, Chapter 21.

(13) Part-time employment--Employment for less than 100% of an institution's normal work schedule.

(14) Professional personnel--Teachers, full-time librarians, full-time counselors, full-time school nurses, other employees who are required to hold a certificate issued under TEC, Chapter 21, Subchapter B, and any other personnel reported by a school district to the Public Education Information Management System with a "professional" role-id.

(15) Regional accrediting agency--The recognized regional accrediting agencies are:

- (A) Southern Association of Colleges and Schools;
- (B) Middle States Association of Colleges and Schools;

- (C) North Central Association of Colleges and Schools;
- (D) New England Association of Schools and Colleges;
- (E) Western Association of Schools and Colleges;
- (F) Northwest Association of Schools and Colleges;
- (G) Commission on International and Trans-regional

Accreditation;

- (H) International Baccalaureate Organization;

(I) European Council of International Schools/Council of International Schools; and

- (J) National Council for Private School Accreditation.

(16) Salary increments--Increases in salary granted for teaching or work experience.

(17) School nurse--An educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice, and who has been issued a license to practice professional nursing in Texas.

(18) Speech pathologist--An educator employed to provide full-time speech pathology services and who meets all the requirements to practice as a speech pathologist pursuant to the rules and regulations relating to professional speech pathology education, licensure, and practice and has been issued a license to practice professional speech pathology in Texas. This definition encompasses all speech pathologists that have been licensed by the Texas Education Agency, ending August 31, 1996, and by the Health and Human Services Commission, beginning September 1, 1996. This paragraph expires September 1, 2011.

(19) [(48)] Service--A term of employment measured in school years in an entity in which the employment is recognized for salary increment purposes.

(20) [(49)] State school--A school that is funded by legislative action in the appropriations act. These schools include the Texas School for the Blind, the Texas School for the Deaf, and schools under the jurisdiction of the Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) and the Texas Youth Commission.

(21) [(20)] Substitute teacher--A certified teacher who works on call, does not have a full-time assignment, and provides instruction.

(22) [(24)] Teacher service record--The official document used to record years of service and days used and accumulated under the state's [states] former minimum sick leave program or the state's current personal leave program.

(b) Required documentation. The following records on professional personnel must be readily available for review.

- (1) credentials (certificate or license);
- (2) service record(s) and any required attachments;
- (3) contract;
- (4) teaching schedule or other assignment record; and
- (5) absence from duty reports.

(c) Credentials for professional personnel. The credentials for professional personnel are as follows.

(1) A current valid Texas certificate, a special assignment permit, a nonrenewable permit, a non-certified instructor's permit, an emergency teaching permit, or the appropriate licensure from the State of Texas.

(2) For special education related service teachers, the credential must be appropriate licensure from the State of Texas.

(3) For those special education related service personnel who do not require Texas certification or licensure, proper credentials as described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) are required.

(d) Teacher service record. The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the teacher service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing school district or charter school to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

(1) The service record must be validated by a person designated by the school district or charter school to sign service records.

(2) Supporting documents are required for service in out-of-state private schools, foreign public and private institutions, the military, and colleges and universities. The type of supporting documentation for each particular entity is prescribed by subsection (h) of this section.

(3) If a person is employed by more than one school district or charter school during the same school year, a service record from each employing district or charter school is required.

(4) For personnel employed in a year-round school system, the actual dates of employment during that school's calendar must be indicated on the service record. The dates may not necessarily conform to the contractual year as defined by subsection (a) of this section.

(5) The service record shall be kept on file at the school district or charter school. When employment with the district or charter school is terminated, the original service record, signed by the employee shall be given to the employee upon request or sent to the next employing school district or charter school. The local school district or charter school must maintain a legible copy for audit purposes.

(6) Cooperative personnel employed by a fiscal agent/manager and itinerant personnel of a cooperative shall be considered to be employees of the fiscal agent/manager and the service record shall be the fiscal agent/manager's responsibility. Personnel employed by a member of a cooperative and assigned to the member are employees of the member and the service record shall be the member's responsibility.

(7) Work experience claimed by career and technology education personnel for salary increment purposes as prescribed by subsection (i) of this section must be recorded on a service record.

(8) State sick leave balances, days earned, and days used by personnel under the former state's minimum sick leave program and the state's current personal leave program must be recorded on the service record or another similar form containing the same information. State sick leave ~~and~~ ~~or~~ state personal leave accumulated in Texas public elementary and secondary schools ~~are~~ ~~is~~ transferable among these schools. State personal ~~[Sick]~~ leave accrued by an employee of a Texas regional education service center, not to exceed five days per each year of employment, is transferable to a Texas public elementary and secondary school. State sick leave and state personal leave accrued by

an employee of Harris County Department of Education and Dallas County Schools are transferable to Texas public elementary and secondary schools in accordance with the TEC, §22.003(a). Local leave accrued under the policy of any entity recognized for creditable service under subsection (g) of this section may be transferred to a Texas public elementary or secondary school at the discretion of the employing school district. The service record shall separately state the number of accumulated state days for which the employee is paid, if any, upon separation from the employing district.

(9) State days used to purchase additional years of service from the Teacher Retirement System of Texas (TRS) for retirement purposes must be deducted from the balance reflected on the service record.

(10) The issuing school district or charter school must submit the service record to the Texas Education Agency upon request.

(e) General provisions for years of creditable service. All service claimed for salary increment purposes must meet the requirements in subsections (f) - (h) of this section. The service record and any other required supporting documents must meet the requirements for such records and documentation in this section. All service shall be based on the contractual year (July 1 - June 30). No more than one year of experience may be acquired in any one contractual year.

(f) Minimum requirements. The table in this subsection indicates the minimum number of days required to earn and receive credit for a year of experience.  
Figure: 19 TAC §153.1021(f) (No change.)

(1) For service performed through the 1989 - 1990 school year, minimum days at less than 100% or at full-time equivalency are applicable only to service in Texas public schools, Texas education service centers, and, beginning in 1978 - 1979, Texas public colleges and universities.

(2) Beginning with service performed during the 1990 - 1991 school year or any year thereafter, employment at less than 100% of the day is recognized in all entities where full-time employment is recognized, provided that documentation is presented to the employing district which verifies that the employment was for not less than three and one-half hours each day.

(3) The 90 days required at 100% of the day for years prior to 1972 - 1973 may be equivalent to four and one-half months, a full semester, or three six-weeks. Where the school year was less than 180 days for any year prior to 1972 - 1973, a minimum of 175 days at 50 - 99% of the day will be accepted, provided that the 175 days constituted two full semesters or six six-weeks.

(4) For experience from the 1978 - 1979 through the 1987 - 1988 school years, full-time equivalent days equal the total number of days employed at 100% of the day plus days employed at 50 - 99% of the day divided by two.

(5) Beginning with the 1988 - 1989 school year, full-time equivalent days equal the total number of days employed multiplied by the percent of day actually worked.

(6) Beginning with the 1998 - 1999 school year, the 90 days required at 100% of the day may be equivalent to four and one-half months or a full semester. The 180 days required at 50-99% of the day may be equivalent to 90 full-time equivalent days (percent of day employed multiplied by number of days employed).

(7) Extended day migrant program employment shall be calculated in accordance with this section and the resulting equivalent must meet the same minimum requirements for professionals for the year in question.

(A) For service prior to the 1970 - 1971 school year, the days employed in the migrant program shall be multiplied by a factor of 1.37.

(B) For service during the 1970 - 1971 through the 1975 - 1976 school years, the days employed in the migrant program shall be multiplied by a factor of 1.31.

(g) Entities recognized for years of service. Service in any of the entities listed in this subsection shall be recognized for professional personnel. The minimum employment requirements in subsection (f) of this section must be met. Requirements concerning service in each type of entity in subsection (h) of this section must also be met. Professional service in the following entities is creditable:

(1) Texas public elementary and secondary schools, including charter schools;

(2) State regional education service centers;

(3) State departments of education;

(4) Texas Department of Corrections--Windham Schools;

(5) Public elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(6) Overseas schools operated by the U.S. Government;

(7) Texas public or private colleges or universities;

(8) Texas private elementary and secondary schools;

(9) Texas non-public special education contract schools;

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation)--state hospitals and state schools;

(11) Texas veterans' vocational schools;

(12) Public or private colleges or universities and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(13) Foreign public or private colleges or universities, or elementary and secondary schools;

(14) U.S. Department of Interior--Bureau of Indian Affairs;

(15) U.S. service academies;

(16) U.S. military service;

(17) Job Corps; and

(18) Peace Corps (in a professional capacity only).

(h) Requirements. Requirements for entities recognized for professional personnel are as follows:

(1) Texas public elementary and secondary schools, including charter schools.

(A) Requirements specific to Texas public elementary and secondary schools.

(i) All professional personnel must be certified by the State of Texas, must hold the proper state or national licensure as required by the position held, or must have the educational requirements for the job assigned. Regardless of the funding source, classroom teachers, full-time librarians, full-time counselors, and full-time school nurses must be paid at least the minimum salary specified in the Texas State Public Education Compensation Plan.

(ii) Professional personnel placed on developmental leaves of absence must be paid at least one-half of their state minimum salary by the school district to receive service credit for increment purposes.

(iii) Instructors in Reserve Officer Training Corps (ROTC) programs conducted by local school districts must be certified or hold an emergency teaching permit and must be paid at least the state minimum salary to receive service credit for increment purposes. An emergency teaching permit need not be renewed as long as the person continues in the ROTC assignment.

(B) Requirements specific to charter schools.

(i) Employment must have been in a professional capacity as defined by subsection (a) of this section.

(ii) Texas charter schools are not required to hire certified teachers other than those in special education and bilingual education, or as stated in the charter application.

(2) State regional education service centers.

(A) Personnel employed in cooperatives for which the education service center is acting as fiscal agency must meet the same requirements as personnel employed in Texas public elementary and secondary schools.

(B) All other personnel must meet the same requirements as personnel employed in state departments of education.

(3) State departments of education. Employment must have been in a professional capacity. For Texas department of education employment, professional positions are defined as personnel employed in positions starting in state pay grade classification B4/A12 and above.

(4) Texas Department of Corrections--Windham schools. Requirements in this subsection shall apply.

(5) Public elementary and secondary schools in all other states of the United States or within the boundaries of any of its territorial possessions. Employment prior to 1990 - 1991 must have been on a full-time basis.

(6) Overseas schools operated by the U.S. government. Schools operated by the United States Government for military dependents and dependents of personnel assigned to an embassy, consulate, etc., are treated as public schools in other states of the U.S. and policies pertaining to public schools in other states apply.

(7) Texas public or private colleges or universities.

(A) For private colleges and universities, accreditation [Accreditation] by the Southern Association of Colleges and Schools is required.

(B) Officer Training Corps programs conducted by accredited colleges or universities must have been employed full-time on a faculty status level. Beginning in 1998 - 1999, service as an instructor in an agricultural extension service operated by an accredited college or university may be recognized for salary increment purposes as long as the person held a valid Texas teaching certificate at the time the service was rendered.

(C) All college or university experience must be recorded on the teacher service record. A supporting letter or form must be attached to the teacher service record verifying that either the full-time or part-time employment was at faculty status or its equivalent and that the schedule of work and the pay constituted that of other similar faculty employees. It is the responsibility of the



employing school district to secure verification of college or university experience.

(8) Texas private elementary and secondary schools.

(A) For experience prior to the 1986 - 1987 school year, accreditation by the Texas Education Agency or the Southern Association of Colleges and Schools is required.

(B) For experience in the 1986 - 1987, 1987 - 1988, and 1988 - 1989 school years, service shall be acceptable if the school was accredited by the Texas Education Agency, or a recognized regional accrediting agency.

(C) For experience in the 1989 - 1990 school year and thereafter, service shall be acceptable if the school was accredited by the Texas Private School Accreditation Commission.

(D) During the 1986 - 1987, 1987 - 1988, and 1988 - 1989 school years, private schools accredited by the Texas Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education will be listed in the Texas School Directory.

(E) Beginning with the 1989 - 1990 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed in the Texas School Directory.

(F) Beginning with the 2004 - 2005 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed on the Texas Education Agency website.

(9) Non-public special education contract schools.

(A) Approval from the Texas Education Agency to provide special education services during the year service was rendered is required. A list of approved schools is maintained by the Texas Education Agency and posted on the agency's school finance website.

(B) The person must have been certified in an area of special education.

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) state hospitals and state schools.

(A) The assignment must have been in an educational program operated in conjunction with a public school program or in a non-educational professional capacity.

(B) Persons employed in an educational program must have held a valid Texas teaching certificate and must have been paid at least the state minimum salary of a teacher in a Texas public school.

(11) Texas veteran's vocational school.

(A) The assignment must have been as an instructor or coordinator.

(B) Service during the period of July 1, 1946, through June 30, 1955, must have been at a school under the jurisdiction of the Texas Education Agency (this service can be verified by the agency).

(C) Service after June 30, 1955, must have been at a veteran's vocational school operated by a Texas county board of school trustees under the jurisdiction of the Veterans Administration.

(12) Public or private colleges and universities, and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions.

(A) Employment must have been, and in the case of colleges and universities, must be verified in the same manner as for Texas colleges or universities.

(B) Accreditation by a recognized state or regional accrediting agency listed in subsection (a)(15) of this section is required. In states or territories that have no provisions for accrediting, licensing, or approving private elementary or secondary schools, service shall be acceptable provided the person held, while employed, a valid teaching certificate from the state in which the school is located or a valid Texas teaching certificate.

(C) It is the responsibility of the employing school district or charter school to have evidence on file of the accreditation status of private schools in other states.

(13) Foreign public or private elementary and secondary schools, colleges, and universities.

(A) Employment in colleges or universities must be verified in the same manner as for Texas colleges or universities.

(B) For foreign public schools, colleges, and universities, accreditation by a recognized agency of the foreign country or by a recognized accrediting agency in the United States is required.

(C) For foreign private schools, colleges, and universities, accreditation must be by a recognized regional accrediting agency listed in subsection (a)(15) of this section, unless the requirements in subparagraph (E) of this paragraph are met.

(D) The accreditation status must be verified in the same manner as for public or private schools in the United States.

(E) Experience from foreign private schools, colleges, and universities that have been accredited by a recognized accrediting agency of the foreign country may be recognized for salary increment purposes, provided the minimum requirements in subsection (f) of this section are met. All relevant and credible information concerning accreditation must be provided to the Texas Education Agency. The recognized accrediting entity in the foreign country is the Department of Education or the Higher Education Authority of that foreign country. It is the responsibility of the foreign country to provide such relevant, credible, and accurate information before any credit is given. Such experience will be considered on an individual country basis. The placement on the minimum salary schedule will begin with the following contractual year (July 1 - June 30) after the final approval is granted by the Texas Education Agency. The district or charter school is not liable for any previously non-compensated salary related to such experience.

(14) United States Department of the Interior--Bureau of Indian Affairs. Service must have been full-time.

(15) United States service academies.

(A) Employment must have been at a faculty status level and must be verified in the same manner as other college or university service.

(B) The service academies are as follows:

(i) Air Force Academy, Colorado Springs, Colorado;

(ii) Coast Guard Academy, New London, Connecticut;

(iii) Military Academy, West Point, New York;

(iv) Naval Academy, Annapolis, Maryland; and

(v) Merchant Marine Academy, Kings Point, New York.

(16) United States military service. Service with the military forces of the United States of America may be counted for salary increment purposes if the following conditions are met:

(A) The person was a professional employee of any entity recognized for creditable service for salary increment purposes within twelve months of entry into active duty.

(B) Form DD-214 or other official discharge papers must be filed with the teacher service record showing:

(i) that military service was in the capacity of an enlisted man or woman or commissioned officer;

(ii) that release or separation from active duty was under honorable conditions; and

(iii) dates of entry and release from active duty.

(C) The person claiming military service was on active duty during the periods September 1, 1940, through August 31, 1947, or September 1, 1950, through August 31, 1954, or for other periods if:

(i) the military service was a result of involuntary induction into active duty; or

(ii) the military service was a result of voluntary entry into active duty for the first time for the individual, and such initial period of voluntary military service claimed as years of service for teacher salary increments does not exceed four years.

(D) Beginning with the 1983 - 1984 school year, for purposes of determining the total years of military experience creditable for increment purposes, a year shall be considered to begin on July 1 and end June 30. During this period, four and one-half months of service must be acquired for an individual to be entitled to one year of experience. Only one year of experience may be earned during any 12-month period. Prior to the 1983 - 1984 school year, credit for military service was calculated based on the 12-month period from September 1 - August 31. Credit granted on that basis shall continue to be effective.

(E) The requirement in subparagraph (A) of this paragraph must be met before any credit is given.

(17) Job Corps. The person must have held a valid teaching certificate or appropriate license that would qualify for service credit during the period of employment.

(18) Peace Corps.

(A) Employment must have been with a school system (Grades K - 12) in a foreign country.

(B) The person must have held a valid teaching certificate or appropriate license that would qualify for service credit from any state in the United States during the period of employment.

(i) Credit for career and technology teachers. In accordance with TEC, §21.403, effective with the 1982 - 1983 school year, certified career and technology education teachers employed for at least 50% of the time in an approved career and technology position may count up to two years of work experience for salary increment purposes if the work experience was required for career and technology certification.

(1) For purposes of this section, an emergency teaching permit shall be the equivalent of a teaching certificate.

(2) Once credit for work experience has been granted, the credit shall be continued regardless of the position held. For personnel granted credit under this section whose employment is split between career and technology and non-career and technology positions, the

years granted shall apply to both the career and technology and the non-career and technology positions.

(j) Adult basic education program credit. A person teaching adult basic education is eligible for creditable service if the program was operated by a public school and the person held a valid teaching certificate.

(k) Substitute teachers. Beginning with the 1998 - 1999 school year, a substitute teacher, as defined in subsection (a) of this section, employed in an entity recognized for years of service as prescribed by subsection (g) of this section is eligible for creditable service.

(l) Salary schedule. The commissioner of education shall publish annually the state minimum salary schedule.

(m) Teacher aides. Beginning with the 2004 - 2005 contractual year, a teacher aide who subsequently attains certification may count up to two years of full-time equivalency of direct student instruction for salary increment purposes. Such experience must be verified on the teacher service record form (FIN-115) or a similar form containing the same information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001406

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

#### CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) proposes amendments to §133.27, concerning Application for Temporary License for Engineers Currently Licensed Outside the United States, §133.53, concerning Reference Statements, and §133.61, concerning Engineering Examinations Required for a License to Practice as a Professional Engineer.

The proposed change to §133.27 clarifies the intent of this rule section by specifying that it applies to engineers temporarily living and working in Texas. Long-term or permanent residents should seek standard licensure.

The proposed change to §133.53 allows the staff of the Texas Board of Professional Engineers to develop a system for on-line submission of reference statements. This change would increase the efficiency and flexibility of the required licensure processes while maintaining the security of the documents.

The proposed change to §133.61 allows for proposed and potential changes to some of the professional examinations prepared and administered by the National Council of Examiners for Engineering and Surveying (NCEES). The current rule unnecessarily refers to the duration of the exams. Future NCEES exams may be longer or shorter than the currently specified eight hours. The

proposed rule change also changes the wording regarding registration for the exams to allow for current on-line registration or registration directly through NCEES.

David Howell, P.E., Director of Licensing for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the accuracy and flexibility of the licensure processes.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

## SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

### 22 TAC §133.27

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, §1001.310, regarding Temporary or Provisional Licenses, §1001.303, which establishes what constitutes Application for License, and §1001.304, regarding examinations.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.27. Application for Temporary License for Engineers Currently Licensed Outside the United States.*

(a) Pursuant to §1001.311 of the Act, a temporary license may be issued under this section for applicants who:

(1) are citizens of Australia, Canada or the United Mexican States;

(2) are seeking to perform engineering work in Texas for three years or less;

(3) ~~[(2)]~~ are currently licensed or registered in good standing with Engineers Australia or at least one of the jurisdictions of Canada or the United Mexican States; and

(4) ~~[(3)]~~ meet the following experience requirements:

(A) Applicant currently registered in Australia shall have at least seven years of creditable engineering experience, three of which must be practicing as a registered engineer with Engineers Australia, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(B) Applicant currently licensed in Canada or United Mexican States shall:

(i) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(ii) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2010.

TRD-201001360

Lance Kinney, P.E.

Interim Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 440-7723

## SUBCHAPTER F. REFERENCE DOCUMENTATION

### 22 TAC §133.53

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, §1001.310, regarding Temporary or Provisional Licenses, §1001.303, which establishes what constitutes Application for License, and §1001.304, regarding examinations.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.53. Reference Statements.*

(a) The applicant shall make available to each reference provider ~~[send]~~ the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record ~~[to each reference provider]~~.

(b) Persons providing reference statements verifying an applicant's engineering experience shall:

(1) complete and sign the reference statement in a format prescribed by the board ~~[form]~~; and

(2) review, evaluate, and sign all applicable portions of the supplementary experience record(s). The reference provider's signature indicates that he has read the supplementary experience record(s), that the record(s) are correct to the best of his knowledge, and that the experience is relevant to licensure. If the reference provider disagrees with or has comments or clarification to the information provided by the applicant, the reference provider should submit written comments or concerns to the board.

(3) for the purposes of this section, a reference statement and associated portions of the applicant's supplementary experience record submitted directly to the board through a secure method pre-

scribed by the board will be considered "signed" as required in this subsection.

(c) - (e) (No change.)

(f) Reference documents submitted directly to the board by the reference provider in a method prescribed by the board will meet the requirements of subsection (d) of this section.

(g) ~~[(f)]~~ Evidence of retaliation by an applicant against a person who provides reference material for an application may be considered in the application process as described in §133.81(d) of this chapter (relating to Receipt and Process).

(h) ~~[(g)]~~ The NCEES record reference documentation may be accepted as reference statements as specified in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2010.

TRD-201001361

Lance Kinney, P.E.

Interim Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 440-7723



## SUBCHAPTER G. EXAMINATIONS

### 22 TAC §133.61

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, §1001.310, regarding Temporary or Provisional Licenses, §1001.303, which establishes what constitutes Application for License, and §1001.304, regarding examinations.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.61. Engineering Examinations Required for a License to Practice as a Professional Engineer.*

(a) - (b) (No change.)

(c) Experience and knowledge examinations may be a [an eight-hour] Fundamentals of Engineering examination and a [an eight-hour] Principles and Practice of Engineering examination prepared by the NCEES or equivalent as determined by the board.

(d) (No change.)

(e) Examinations may be scheduled by [obtaining the necessary form from the board office and] timely submission of registration information in a format specified by the Board [to the board] with the appropriate examination fee.

(f) Individuals who plan to take an examination must have their registration completed [completed examination scheduling form and the appropriate fee in the board office] by the close of regular business on the date established by the applicable examination schedule adopted by the board.

(g) Applicants providing an official verification from an NCEES member board certifying that they have passed the Fundamentals of Engineering and/or Principle and Practices of Engineering [eight-hour] examination(s) in that state shall not be required to take the examination(s) again.

(h) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2010.

TRD-201001362

Lance Kinney, P.E.

Interim Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 440-7723



## CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

### SUBCHAPTER D. FIRM AND GOVERNMENTAL ENTITY COMPLIANCE

#### 22 TAC §137.77

The Texas Board of Professional Engineers (Board) proposes amendments to §137.77, concerning Firm Registration Compliance.

The proposed change to §137.77 allows a Registered Firm to voluntarily surrender its registration. The current rules only allow a firm to end an existing registration by going delinquent at the next renewal and expiring after a year. The proposed change would allow for an affirmative end to a registration instead of a default. The proposed change would be more consistent with how PE licenses are handled.

David Howell, P.E., Director of Licensing for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the accuracy and flexibility of the licensure processes.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regu-

lation of the practice of engineering in this state and §1001.405, regarding Practice by Business Entity.

No other statutes, articles or codes are affected by the proposed amendment.

*§137.77. Firm Registration Compliance.*

(a) - (h) (No change.)

(i) A firm registered under Chapter 135 of this title (relating to Firm Registration) may voluntarily surrender the registration by submitting a request in writing provided that the firm:

(1) is in good standing; and

(2) does not have an enforcement case pending before the board.

(j) A firm registration that has been voluntarily surrendered may not be renewed. A firm which has voluntarily surrendered a registration may apply for a new registration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2010.

TRD-201001363

Lance Kinney, P.E.

Interim Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 440-7723



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER F. MOTOR VEHICLE SALES TAX**

###### **34 TAC §3.75**

The Comptroller of Public Accounts (comptroller) proposes an amendment to §3.75 concerning refunds, payments under protest, payment instruments and dishonored payments.

Subsection (a) paragraph (2) is amended to add the definition of a rental company.

Subsection (b) addresses refund procedure. Paragraph (2) clarifies that the comptroller may determine the eligibility and make eligible refund of error tax initially paid to a county tax assessor-collector. Paragraph (3) clarifies that the comptroller may determine the eligibility and make eligible refund of error tax initially paid to a dealer on other than a seller finance sales, and remitted through a county tax assessor-collector. New paragraph (5) is added to describe the procedure for obtaining a refund of motor vehicle rental tax paid in error. Non-substantive changes are made for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the procedures for obtaining refunds of motor vehicle sales and rental taxes paid in error. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amended section implements Tax Code, §152.003.

*§3.75. Refunds, Payments Under Protest, Payment Instruments and Dishonored Payments.*

(a) Definitions. The following words and terms, when used in this section, shall have the meanings, unless the context clearly indicates otherwise.

(1) Dealer--A motor vehicle seller licensed by the Texas Department of Transportation in accordance with Occupations Code, Chapter 2301 [the Article 6686, Revised Statutes], or [the] Transportation Code, Chapter 503, to sell motor vehicles.

(2) Rental Company--A motor vehicle rental provider permitted under Tax Code, §152.065.

(3) [(2)] Seller-Financed Sales--A retail sale of a motor vehicle by a dealer in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received.

(b) Refunds.

(1) Tax paid to state. Any person, or the person's [his] attorney, assignee, or other successor [executor, or administrator] may request from the comptroller a refund of any tax that the person directly paid and [he has] remitted to the state but that was not due.

(A) The refund request must be made within:

(i) four years from the date on which the tax was due and payable; or

(ii) six months after a determination for the periods for which the refund is claimed becomes final; or

(iii) six months after any determination would have become final had payment not been made before the due date.

(iv) a claim for refund of an amount paid pursuant to a deficiency determination is timely for all transactions included in the deficiency determination if made in accordance with clauses (ii) or (iii) of this subparagraph. A claim for refund for items not included in a deficiency determination must be made in accordance with clause (i) of this subparagraph.

(B) Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension of the statute of limitations.

(C) An extension applies only to the periods specifically mentioned in the agreement. Any assessment or refund request pertain-

ing to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been authorized.

(D) The request for a refund must be made in writing and must state fully and in detail the specific grounds upon which the claim is founded. The request must also indicate the period for which the claimed overpayment was made. The claim must be submitted within the applicable limitation period as provided in subparagraph (A) of this paragraph, and must include supporting documentation.

(E) The comptroller may require a person to submit additional information to verify the refund claim. The person must show to the satisfaction of the comptroller that the refund is due and make available to the comptroller any documentation that the comptroller requires to process the refund.

(F) ~~[(E)]~~ In determining the statute of limitations for filing a refund claim, the time during which an administrative proceeding is pending before the comptroller for the same period is not counted. A taxpayer may not file a claim for the same transaction and for the same time period as a refund claim previously denied.

(G) ~~[(F)]~~ Failure to file a claim within the limitation prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(2) Tax paid to county tax assessor-collector. Tax paid to the county tax assessor-collector should be recovered in the same manner as prescribed in paragraph (1) of this subsection. The county tax assessor-collector by having remitted tax collected and submitting record of each transaction to the comptroller, authorizes the comptroller to accept refund requests directly from the claimant, to determine the eligibility of the refund and to make eligible refunds. The written refund request should include a copy of the receipt issued by the county tax assessor-collector for payment of taxes and the taxpayer's social security number, ~~[(e)]~~ federal employers identification number, or comptroller assigned tax permit number.

(3) Tax paid to a dealer on sales other than seller-financed sales where the dealer is required to remit the tax to the county tax assessor-collector pursuant to Tax Code, §152.0411. Tax paid to dealer should be recovered in the same manner as prescribed in paragraph (1) of this subsection. The county tax assessor-collector by having accepted and remitted the tax collected, and submitting record of each transaction to the comptroller, authorizes the comptroller to accept refund requests directly from the claimant, to determine the eligibility of the refund and to make eligible refunds. The written refund request should include a copy of the receipt issued by the county tax assessor-collector for payment of taxes and the taxpayer's social security number, ~~[(e)]~~ federal employers identification number, or comptroller assigned tax permit number.

(4) Tax paid to a dealer on seller-finance sales. A person who remits tax to a dealer may not request from the comptroller a refund of any tax that the person has remitted to a seller but contends was not due. The tax must be recovered from the seller.

(A) A written request for a refund must be directed to the dealer and must state the specific grounds upon which the claim is founded. The written request should be retained by the dealer to document the reason tax was refunded.

(B) After the dealer has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the dealer may then seek reimbursement from the state in accordance with the procedures outlined in paragraph (1) of this

subsection, or take a credit on the dealer's next return in the amount refunded or credited to the account of the purchaser.

(5) Tax paid to a rental company. A person who remits tax to a rental company may not request from the comptroller a refund of any tax that the person has remitted to a rental company but contends was not due. The tax must be recovered from the rental company.

(A) A written request for a refund must be directed to the rental company and must state the specific grounds upon which the claim is founded. The written request should be retained by the rental company to document the reason tax was refunded.

(B) After the rental company has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the rental company may then seek reimbursement from the state in accordance with the procedures outlined in paragraph (1) of this subsection, or take a credit on the rental company's next return in the amount refunded or credited to the account of the purchaser.

(c) Payments under protest.

(1) Payment made to a county tax assessor-collector.

(A) If, pursuant to the authority of ~~[(the)]~~ Tax Code, §112.051, motor vehicle sales and use taxes are paid under protest to a county tax assessor-collector, the protest payment to the tax assessor-collector must be accompanied by a written letter of protest that sets out in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized. Immediately upon receipt of the protest payment and written protest, a copy of the protest letter must be sent to the comptroller by the tax assessor-collector together with a copy of the tax receipt showing that tax was paid. If the taxpayer fails to submit to the county tax assessor-collector the letter of protest at the time of payment, the tax should be remitted normally by the tax assessor-collector.

(B) The payment of taxes under protest to a county tax assessor-collector is limited to those taxes that the tax assessor-collector is authorized to receive.

(C) It is the duty of the county tax assessor-collector to transmit the full amount of all motor vehicle sales and use taxes paid under protest to the ~~comptroller~~ ~~[(state treasurer)]~~. The tax assessor-collector shall transmit these protest payments to the ~~comptroller~~ ~~[(state treasurer)]~~ daily and the tax assessor-collector must inform the ~~comptroller~~ ~~[(treasurer)]~~ in writing that such taxes were paid under protest.

(2) Payment made to the comptroller. A written letter of protest that sets out fully and in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will be deemed not to have been made under protest.

(d) Payment Instruments.

(1) The ~~comptroller~~ ~~[(Comptroller of Public Accounts)]~~ authorizes money orders, cash, cashier's checks, and certified checks as valid methods of payment of motor vehicle sales and use taxes to a county ~~tax assessor-collector~~ ~~[(assessor and collector of taxes)]~~. If a county tax assessor-collector accepts personal checks as payment instruments, the county tax assessor-collector ~~[(he)]~~ is relieved of liability only if the county ~~tax assessor-collector~~ ~~[(he)]~~ requires at least the following identification:

(A) personal data including name, home address, home telephone number, name and location of employer, and telephone number of employer;

(B) driver's license number of the person signing the check; and

(C) license plate number of motor vehicle(s) owned by person signing the check.

(2) if a county tax assessor-collector accepts a personal check in payment of motor vehicle sales and use taxes, and the personal check is not honored, the county tax assessor-collector may request the assistance of the comptroller in collecting the monies due if, within the statute of limitations set forth in subsection (b)(1) of this section, the county tax assessor-collector [he] certifies on a form promulgated by the comptroller:

(A) the identification information required by this section [rule];

(B) two dates upon which the county tax assessor-collector sent the check to the appropriate bank;

(C) the date upon which the sheriff attempted to seize the license plates if the fees for the plates were included in the check; and

(D) the date(s) the county tax assessor-collector took other collection action, such as filing a complaint with the county attorney or hiring a collection agency.

(e) **Voided Receipt Because of Dishonored Payment.** A county tax assessor-collector has no authority to void a motor vehicle sales tax receipt and not report the tax payment when the check given in payment of the tax is returned unpaid [(See Attorney General Opinion O-4745 (1942))].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2010.

TRD-201001341

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-0387

◆ ◆ ◆

### 34 TAC §3.80

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Comptroller of Public Accounts proposes the repeal of §3.80, concerning motor vehicles awarded as prizes. The existing section is being repealed so that the content can be updated in a new §3.80 to reflect changes pursuant to House Bill 2654, 81st Legislature, 2009, effective September 1, 2009.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by providing for the future clarification of the taxability of a motor vehicles awarded as a prize. There would be no anticipated significant economic cost to the public. This repeal is adopted under Tax Code, Title 2, and does not require a state-

ment of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, §152.001(1) (concerning the definition of sale), §152.025(a) (concerning the ten dollar tax imposed on the gift of a motor vehicle), and §152.062(b) and (b-1) (concerning the notarized joint statement required for a gift transaction).

#### §3.80. Motor Vehicles Awarded as Prizes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2010.

TRD-201001342

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-0387

◆ ◆ ◆

### 34 TAC §3.80

The Comptroller of Public Accounts proposes new §3.80, concerning motor vehicles transferred as a gift or for no consideration.

The new section replaces the existing §3.80, which is being repealed to update the content to reflect changes pursuant to House Bill 2654, 81st Legislature, 2009, effective September 1, 2009 as follows:

Subsection (a) contains definitions of key terms, including child, stepchild, parent, stepparent, grandparent, grandchild, sibling, guardian and decedent's estate as reflected within the Family Code and the Probate Code.

Subsection (b) contains specific rules of taxation relating to the transfer of a motor vehicle as a gift.

Subsection (c) contains specific rules of taxation relating to the transfer of a motor vehicle for no consideration when the transaction does not involve a motor vehicle dealer.

Subsection (d) contains specific rules of taxation relating to the transfer of a motor vehicle to or from a motor vehicle dealer for no consideration.

Subsection (e) contains specific rules of taxation relating to the transfer of a motor vehicle as a prize.

Subsection (f) relates to the documentation required for the transfer of a motor vehicle as a gift.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying for taxpayers recent legislative changes and policy clarification concerning the tax consequences resulting from motor vehicles transferred as a gift, for no consideration, or as a prize. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the new rule may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code, §152.001(1) (concerning the definition of sale), §152.025(a) (concerning the ten dollar tax imposed on the gift of a motor vehicle), and §152.062(b) and (b-1) (concerning the notarized joint affidavit required for a gift transaction).

§3.80. Motor Vehicles Transferred as a Gift or for No Consideration.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appraisal--A written statement independently and impartially prepared by a qualified appraiser employing generally accepted appraisal methods and techniques, in a narrative format or on a form chosen by the appraiser, setting forth an opinion as to the current fair market value of an adequately described motor vehicle and any accessories or equipment that may be affixed to the motor vehicle. The appraisal must be sufficiently descriptive to enable a third party to readily ascertain the estimated value of the vehicle and the rationale for that estimate.

(2) Book value--The value, in dollars and cents, of a motor vehicle on the owner's books and records at the time the vehicle is transferred based on General Accepted Accounting Principles (GAAP).

(3) Child--The biological son or daughter of a parent or parents; or the son or daughter of a parent or parents by virtue of legal adoption; or the son or daughter of a parent who, pursuant to Family Code, Chapter 160, is presumed to be a biological parent, has executed an acknowledgment of parenthood or has been adjudicated to be a biological parent by court decree, or a child in the care of a foster parent as that term is defined in this subsection.

(4) Community property--All property, both real and personal other than separate property, acquired by the husband or wife during marriage. All property acquired during a marriage by either spouse is presumed to be community property.

(5) Common-law marriage--An informal marriage where a man and woman have agreed to be husband and wife, are presently living together in Texas as husband and wife, and who hold themselves out to the public in Texas as being husband and wife. Every marriage entered into in Texas is presumed to be valid unless expressly void by statute.

(6) Consideration--The amount paid or to be paid for a motor vehicle, valued in money, as prescribed in Tax Code, §152.002, or anything of monetary value including but not limited to cash or the equivalent, a book entry reflecting cash received or paid, the forgive-

ness or assumption of debt, book entries reflecting accounts receivable or accounts payable for an item, or issuance of stock when stock ownership in the subsidiary is less than 100%. Consideration does not include any amount equal to less than 10% of a motor vehicles current appraised fair market value at the time of transfer.

(7) Dealer--A person who holds a license to sell motor vehicles issued pursuant to Transportation Code, Chapter 503, Subchapter B, or under similar regulatory requirements of another state. The term "dealer" includes a dealer that holds a franchised dealer's license issued pursuant to Occupation Code, Chapter 2301, for a particular make of new motor vehicle, an independent dealer licensed to sell motor vehicles other than new motor vehicles, a wholesale motor vehicle dealer, an independent mobility motor vehicle dealer, a wholesale auction dealer, a motorcycle dealer, a trailer or semitrailer dealer, including house or travel trailers, an independent mobility dealer, or any other dealer as provided by Transportation Code, Chapter 503, Subchapter B. The term "dealer" does not include a drive away operator or a salvage vehicle dealer licensed pursuant to Occupation Code, Chapter 2302.

(8) Decedent's estate--The real and personal property of a deceased person subject to distribution by will or the laws of descent and distribution. The term includes property held in joint tenancy or joint ownership with a right of survivorship.

(9) Foster parent--A person who under the authority of a governmental agency, or a private adoption or foster care agency provides foster or substitute care as defined in Tax Code, §700.1301, for a child who is currently under the care of said foster parent in their home.

(10) Grandchild--The child of one's son or daughter by birth or legal adoption. The term "grandchild" includes a step-grandchild.

(11) Grandparent--The father or mother of a child's parent or parents either by birth or legal adoption. The term "grandparent" includes a step-grandparent.

(12) Guardian--A person appointed by a court to have the legal authority over and care of the real and personal property or the person of a minor or an incapacitated person as evidenced by a certificate of guardianship or letters of guardianship. The term "guardian" includes a general, limited, temporary or successor guardian, a guardian of a local, county or regional guardianship program, or a certified public guardian or certified private professional guardian in the business of providing guardianship services. The term "guardian" does not include a guardian ad litem appointed to represent an incapacitated person in a guardianship proceeding.

(13) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highways and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term "motor vehicle" includes, but is not limited to, automobiles, motor homes, motorcycles, trucks, truck tractors, trailers, semitrailers, house or travel trailers, trailers sold unassembled in a kit, dollies, jeeps, stingers, auxiliary axles, converter gears, and truck cab/chassis. A unit that meets the definition of a "motor vehicle" does not lose its identity as a motor vehicle if tangible personal property is added to the vehicle allowing the unit to perform a specialized function but prohibiting the vehicle from transporting separate property or persons other than the driver. An example of such a vehicle would be a truck cab/chassis upon which oil well servicing equipment is attached.

(14) Parent--The biological mother or father of a child, or the mother or father of a child by virtue of legal adoption, or a person who, pursuant to Family Code, Chapter 160, is presumed to be a biological parent or has executed an acknowledgment of parenthood or



has been adjudicated to be the biological parent by court decree. The term "parent" includes foster parent.

(15) Separate property--Any property, both real and personal, owned by a spouse before marriage, or acquired during the marriage by gift, devise, or descent.

(16) Sibling--One of two or more individuals having one common parent by birth, legal adoption or marriage. The term includes brother, sister, half-brother, half-sister, step-brother or step-sister.

(17) Spouse--A person to whom one is legally married as husband or wife either by formal ceremony or by common-law pursuant to Family Code, Title 1, Subtitle A, or a comparable law of another jurisdiction.

(18) Standard presumptive value--The taxable value of a private-party transfer of ownership to a motor vehicle, as determined by §3.79 of this title (relating to Standard Presumptive Value).

(19) Stepchild--The biological or adopted child of one's current spouse from a previous marriage whose parent-child relationship is through marriage only and not by birth or adoption.

(20) Stepparent--The current spouse of a child's mother or father whose only relationship to the child is through marriage and not by birth or adoption.

(b) Transfer of a motor vehicle as a gift. Effective September 1, 2009, a \$10 gift tax is imposed on the recipient of a joint or undivided ownership interest in a motor vehicle for no consideration as follows:

(1) The transfer of a motor vehicle to a recipient from a parent, step-parent, grandparent, step-grandparent, child, stepchild, grandchild, step-grandchild, foster parent, sibling, or guardian.

(2) The transfer of a motor vehicle from a spouse when the vehicle is the separate property of the spouse, such as a motor vehicle owned by a spouse prior to marriage. A motor vehicle acquired by a spouse after marriage is presumed to be community property and not subject to either gift tax or motor vehicle sales and use tax when title is transferred between husband and wife.

(3) The transfer of a motor vehicle from a decedent's estate to the lawful devisees or heirs by will or by the laws of descent and distribution, including a motor vehicle transferred to:

(A) the surviving owner or owners of a motor vehicle owned jointly by two or more parties when there is a right of survivorship agreement signed by the joint owners on file with the Department of Motor Vehicles pursuant to Transportation Code, §501.031; or

(B) the representative of the decedent by the trustee of a trust which terminates upon the decedent's death.

(4) The transfer of a motor vehicle from or to a nonprofit organization that:

(A) obtains a determination letter or a group exemption ruling letter from the Internal Revenue Service (IRS) that states that the organization qualifies for exemption from federal income tax under Title 26, Internal Revenue Code, §501(c)(3);

(B) is organized and operated for:

(i) religious, charitable, scientific, literary, or educational purposes;

(ii) testing for public safety;

(iii) prevention of cruelty to children or animals; or

(iv) promotion of amateur sports competition; and

(C) uses the motor vehicle exclusively for the purposes for which the organization was established.

(5) To be a valid gift or transfer of title to community property between spouses, the principal parties to the transfer of a motor vehicle for no consideration must file, with the county tax assessor-collector, a properly completed Texas Affidavit of Motor Vehicle Gift Transfer, Form 14-317. A properly completed affidavit must conform to the requirements pursuant to subsection (f) of this section.

(c) Transfer of a motor vehicle for no consideration, except for transfers involving a dealer. Effective September 1, 2009, the recipient of a joint or undivided ownership interest in a motor vehicle for no consideration that does not qualify as a gift pursuant to subsection (b) of this section or is not exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E, is subject to sales and use tax. The amount on which the tax is computed is as follows:

(1) the standard presumptive value of the vehicle; or

(2) if there is no standard presumptive value for the vehicle, the recipient must provide a value for the vehicle to the tax assessor-collector by means of:

(A) documentation listing a minimum suggested sales price based on the condition of the vehicle at the time of transfer as provided by a nationally recognized motor vehicle value guide service or motor vehicle value guide publication; or

(B) an appraisal listing the fair market value of the vehicle at the time of transfer.

(3) Transfers of motor vehicles for no consideration that do not qualify as a gift include but are not limited to:

(A) A motor vehicle transferred between individuals, including, but not limited to aunts, uncles, nephews, nieces, daughter or son-in-laws, or father or mother-in-laws.

(B) A motor vehicle transferred to or from a nonprofit organization that:

(i) is not exempt from federal income tax under 26 U.S.C., §501(c)(3);

(ii) is not exempt from motor vehicle sales and use tax pursuant to Tax Code, §152.087, relating to volunteer fire departments and emergency medical service providers exempt under 26 U.S.C., §501(a); or

(iii) is not exempt from sales and use tax pursuant to Tax Code, §152.088, relating to churches, and religious societies.

(C) A motor vehicle transferred between corporations, limited liability companies, partnerships and trusts; or between an individual and a corporation, limited liability company, partnership or trust.

(d) Transfer of a motor vehicle to or from a dealer.

(1) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration from a dealer that is in business as a sole proprietor is subject to tax by the recipient of the vehicle based on the book value of the vehicle at the time of the transfer unless the transaction qualifies as a gift pursuant to subsection (b) of this section, or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(2) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration to a dealer that is in business as a sole proprietor is subject to tax by the dealer on the value of the vehicle pursuant to subsection (c)(2) of this section, at the time of the

transfer unless the transaction qualifies as a gift pursuant to subsection (b) of this section, or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(3) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration from a dealer that is a corporation, limited liability company, partnership or trust is subject to tax by the recipient of the vehicle based on the dealer's book value of the vehicle at the time of the transfer, unless the transaction qualifies as a gift pursuant to subsection (b)(4) of this section, or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(4) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration to a dealer that is a corporation, limited liability company, partnership or trust is subject to tax by the dealer on the value of the vehicle pursuant to subsection (c)(2) of this section, at the time of the transfer, unless the transaction qualifies as a gift pursuant to subsection (b)(4) of this section or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(e) Transfer of a motor vehicle as a prize. A joint or undivided ownership interest in a motor vehicle that is transferred to the winner of a contest or drawing, regardless of how the contest or drawing is held, is subject to sales and use tax as follows:

(1) A motor vehicle that is purchased by a contest sponsor and transferred directly from the seller of the vehicle to the contest winner is subject to tax based on the total consideration paid for the vehicle. The tax is the liability of the contest sponsor and is due and payable before the vehicle can be titled and/or registered.

(2) A motor vehicle that is transferred directly from the seller of the vehicle to a contest sponsor for consideration and the sponsor subsequently transfers the vehicle to the contest winner is subject to tax as follows:

(A) the sponsor owes tax on the total consideration paid for the vehicle to the seller; and

(B) the winner owes sales and use tax based on the taxable value pursuant to subsection (c) of this section, unless the transfer from the sponsor to the winner qualified as a gift pursuant to subsection (b)(4) of this section.

(3) The transfer of a motor vehicle directly from the owner of the vehicle to a contest sponsor for no consideration, and the subsequent transfer of the vehicle from the sponsor to the contest winner are both subject to tax pursuant to subsection (c) of this section unless:

(A) the owner of the vehicle is a dealer, then the sponsor owes tax based on the dealer's book value of the vehicle at the time of the transfer and the winner owes tax pursuant to subsection (c) of this section; or

(B) if the sponsor qualifies as a nonprofit organization pursuant to subsection (b)(4) of this section, then the \$10 gift tax is due by both the sponsor and the winner.

(4) The transfer of a motor vehicle directly to the winner of a contest or drawing from a manufacturer or dealer of motor vehicles that sponsored the contest or drawing is subject to tax by the winner based on the manufacturer's or dealer's book value of the vehicle at the time of transfer.

(5) The transfer of a motor vehicle directly from a sponsor of a contest or drawing located outside of Texas to a winner who is a Texas resident or who is domiciled or doing business in Texas is subject to use tax by the winner pursuant to subsection (c) of this section if the vehicle is brought into Texas for use on the public highways of Texas unless:

(A) the sponsor is a manufacturer or dealer, then the winner owes tax on the manufacturer's or dealer's book value of the vehicle at the time of transfer; or

(B) the sponsor qualifies as a nonprofit organization pursuant to subsection (b)(4) of this section, then the \$10 gift tax is due by the winner.

(f) Documentation required for a gift of a motor vehicle. The principal parties to the transfer of a motor vehicle as the result of a gift or transfer of title to community property between spouses pursuant to subsection (b) of this section, must file comptroller's form 14-317, Texas Affidavit of Motor Vehicle Gift Transfer, with the tax assessor-collector of the county in which the Application for Texas Certificate of Title, form 130-U, is submitted.

(1) To be valid, the affidavit must be properly completed and contain the signatures of all principal parties to the transaction sworn to and subscribed before either:

(A) a notary public of Texas or the equivalent from some other state or jurisdiction; or

(B) a county tax assessor-collector or an employee of the county tax assessor-collector pursuant to Government Code, §602.002.

(2) the party or parties whose signature is being acknowledged must:

(A) be present and sign the affidavit in front of the tax assessor-collector or an employee of the county tax assessor-collector; or

(B) have a signed power of attorney from any absent party or the signature of the absent party must be formally certified pursuant to paragraph (1)(A) of this subsection.

(3) Pursuant to Tax Code, §152.062, the tax assessor-collector may examine each Texas Affidavit of Motor Vehicle Gift Transfer or Application for Texas Certificate of Title for their truth and accuracy. If the tax assessor-collector has reason to question the validity of the information in an affidavit or application for title, or if any material fact fails to meet the guidelines required by the Comptroller, the tax assessor-collector may request that any party to the affidavit or application for title furnish further substantiation for the information contained in the affidavit or application for title, including but not limited to documentation used to arrive at a taxable value, or proof of marriage, certified copies of birth certificates, decrees of adoption, baptismal records, court orders establishing paternity or voluntary admissions of paternity.

(4) Pursuant to Tax Code, §152.101, a person commits a felony of the third degree by signing an affidavit or application for title required by this section if he or she knows that it is false in any material fact.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2010.

TRD-201001343

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-0387

◆ ◆ ◆

## SUBCHAPTER O. STATE SALES AND USE TAX

### 34 TAC §3.344

The Comptroller of Public Accounts proposes an amendment to §3.344, concerning telecommunications services. This section is being amended to implement several bills as follows. Senate Bill 1497, 77th Legislature, 2001 implements the federal Mobile Telecommunications Sourcing Act (4 U.S.C §§116-126) (hereafter collectively SB 1497). Under SB 1497, effective for billing cycles beginning on or after August 1, 2002, state and local sales taxes on mobile telecommunications services are determined by the customer's place of primary use. House Bill 2425, 78th Legislature, 2003, (hereafter HB 2425) added Tax Code, §151.025(d) and changed billing and records requirements for telecommunications service providers. House Bill 1459, 80th Legislature, 2007 (hereafter HB 1459), excludes from telecommunications services pay telephone calls that are made by coins, but not other forms of payment. House Bill 3319, 80th Legislature, 2007 (hereafter HB 3319), expands the sale for resale exemption to apply to cell phones and other wireless voice communications devices purchased by persons who do not sell telecommunications services. Specific amendments are as follows.

Subsection (a)(1) updates the definition of basic local exchange telephone service for purposes of clarity and due to SB 1497. Paragraph (4) provides a definition for interstate long-distance telecommunications service for purposes of clarity and due to SB 1497. Paragraph (5) defines intrastate long-distance telecommunications service for purposes of clarity and due to SB 1497. Paragraph (6) defines mobile telecommunications service pursuant to SB 1497. Paragraph (7) defines pay telephone coin sent pursuant to HB 1459. Paragraph (8) defines place of primary use pursuant to SB 1497. Paragraph (9) defines prepaid telecommunications service according to longstanding agency policy. Paragraph (10) clarifies the definition of private communications service according to longstanding agency policy. Paragraph (13) revises the definition of telecommunications services to reflect changes made under SB 1497, HB 1459, and to clarify agency policy. Paragraph (15) is revised to clarify when the sale of a prepaid telephone calling card is treated as tangible personal property for determining tax due, and when such a sale is taxed as a telecommunications service. New paragraph (16) adds a definition for Voice over Internet Protocol (VoIP) to better reflect the current state of technology with respect to telecommunications services. This definition is based on Newton's Telecom Dictionary (2009).

Subsection (b) identifies specific services on which tax is due and now includes provisions to distinguish between intrastate and interstate long-distance services according to agency policy, to account for mobile telecommunications services under SB 1497, and to distinguish the taxability of pay telephone services when paid for with something other than coins. Paragraph (9) clarifies the taxability of equipment and charges related to the sale of telecommunications services and expresses longstanding agency policy related to the requirement for separate invoices for telecommunications services and equipment so that appropriate state and local tax rates are applied. Paragraph (11) clarifies agency policy regarding private line services because of advances in technologies and to express longstanding agency policy regarding allowable allocation methods for sellers based on the percentage of customer channel termination points in Texas. Paragraph (12) clarifies agency policy related

to charges that are passed through to customers or imposed on service providers that become part of the tax base.

Subsection (c) in the current version of the rule is deleted to reflect that the telecommunications infrastructure fund assessment is repealed as of September 1, 2008. The remaining subsections are renamed accordingly.

Subsection (c) now addresses nontaxable services and adds paragraph (5) to reflect changes due to SB 1497. Paragraph (6) explains longstanding policy that charges reflected on customer bills that are not a cost of doing business of the seller, such as 9-1-1 fees, are not part of the tax base and are not subject to tax.

Subsection (d) now reflects changes to billing and records requirements due to HB 2425 as now reflected in Tax Code, §151.025(d).

Subsection (e) now concerns the resale of tangible personal property and is organized into two paragraphs. Subsection (e)(2) adds the resale exemption for persons who sell cell phones and other wireless voice communications devices as a condition of the purchase of telecommunications services from another pursuant to HB 3319.

Subsection (f)(2) reflects longstanding requirements for the resale of telecommunications services. Paragraph (3) explains the resale provisions for mobile telecommunications service providers under SB 1497.

Subsection (h), previously subsection (i), is rewritten and reorganized to reflect local tax provisions as follows. Paragraph (1) explains that local jurisdictions may repeal the exemption on local telecommunications services taxes. Paragraph (2) clarifies that local taxes can never apply to interstate long-distance telecommunications services. Paragraph (3) clarifies how local taxes are to be collected, including for prepaid telecommunications service, but excluding mobile telecommunications services which are addressed in paragraph (4). Paragraph (4) clarifies how local taxes apply to mobile telecommunications services under SB 1497. Paragraph (5) addresses local tax rules for prepaid telephone cards.

Nonsubstantive changes are made throughout the section to improve clarity and readability.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the responsibilities of telecommunications businesses subject to the sales and use tax and clarifying the taxability of certain telecommunications services. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.006 (Sale for Resale), 151.009 (Tangible Personal Property), 151.0103 (Telecommunications Services), 151.01032 (Telephone Prepaid Calling Card), 151.025(d) (Records Required to be Kept), 151.061 (Sourcing of Charges for Mobile Telecommunications Services), 151.323 (Certain Telecommunications Services), and 322.109(b) (Telecommunications Exemption).

§3.344. *Telecommunications Services.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Basic local exchange telephone service--The provision by a telephone company of each access line and each dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. Services are [will be] considered [to be] basic irrespective of whether the customer has access to a private [line] or party line, or whether the customer has limited or unlimited access. The term [it] does not include international, interstate, or intrastate long-distance telecommunications services or mobile telecommunications services [telecommunication service].

(2) Internet--Collectively [collectively] the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(3) Internet access service--A [a] service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term does not include telecommunications services. See §3.366 of this title (relating to Internet Access Services).

(4) Interstate long-distance telecommunication service--A telecommunication service that originates in one state, crosses state lines, and terminates in another state.

(5) [{4}] Intrastate long-distance telecommunications service [Long-distance telecommunication]--A telecommunication service that [which both] originates and terminates within one state, but crosses the boundaries on subdivisions or jurisdictions within the state [from and is billed to a telephone number or billing or service address within Texas].

(6) Mobile telecommunications service--The provision of a commercial mobile radio service, as defined in 47 C.F.R. 20.3 of the Federal Communications Commission's (FCC) regulations in effect on June 1, 1999 under the Mobil Telecommunications Sourcing Act (4 U.S.C. §§116-126). The term includes cellular telecommunications services, personal communications services (PCS), prepaid wireless services, specialized mobile radio services, wireless voice over Internet protocol services, and paging services. The term does not include telephone prepaid calling cards or air-ground radio telephone services as defined in 47 C.F.R. 22.99 of FCC regulations in effect on June 1, 1999.

(7) Pay telephone coin sent--Telecommunications service paid for by the insertion of coins into a coin-operated telephone.

(8) Place of primary use--The physical street address that is representative of where a customer primarily uses a mobile telecommunications service. That location must be either the customer's residential street address or the customer's primary business street address that is within the licensed service area of the service provider. The individual or entity that contracts with the service provider is the customer.

If the individual or entity that contracts with the service provider is not the end user, then the physical street address where the end user primarily uses the service determines the customer's place of primary use. For example, a business owner who is located in Austin, Texas establishes mobile telecommunication service accounts for employees who are located in other cities. One employee does business from his home in Dallas, Texas. Two other employees work at an office that is located in Houston, Texas. Another employee works at an office that is located in New Orleans, Louisiana. The home street address of the employee in Dallas is the place of primary use for that cellular phone account. The place of primary use for the two Houston employees is the street address of the Houston office. The place of primary use for the employee in Louisiana is the street address of the New Orleans office.

(9) Prepaid telecommunications service--A telecommunications service, including a prepaid wireless service, for which the provider requires a customer to prepay the full amount prior to provision of the service. The term does not include the sale or use of a telephone prepaid calling card. A prepaid telecommunications service is taxed as the sale of a telecommunications service and local sales tax is collected as explained in subsection (h)(3) of this section.

(10) [{5}] Private communication service--A telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. [Private line--A telephone circuit dedicated for use between specific locations.]

(A) As it relates to private communication service, the term "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(B) As it relates to private communication service, the term "customer channel termination point" means the location where the customer either inputs or receives the communications.

(11) [{6}] Seller--Any person who sells [selling] telecommunications services including a hotel, motel, owner or lessor of an office, residential building or development that contracts and pays for telecommunications services for resale to guests or tenants.

(12) [{7}] Taxable service--A telecommunications service or other taxable service listed in Tax Code, §151.0101 [Telecommunications services].

(13) [{8}] Telecommunications services--The electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, Voice over Internet Protocol (VoIP), or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The term includes mobile telecommunications services, and prepaid telecommunications services. The term does not include:

(A) the storage of data or other information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content;

(B) the sale or use of a telephone prepaid calling card;

(C) Internet access service; or

(D) pay telephone coin sent.

(14) ~~[(9)]~~ Telephone company--A person who owns or operates a telephone line or telephone in this state and charges for its use.

(15) ~~[(40)]~~ Telephone prepaid calling card--A [a] card or other item, including an access code, that represents the right to access telecommunications services, other than prepaid telecommunications services, through multiple devices, regardless of the network providing direct service to the device used, [make one or more telephone calls] for which payment is made in incremental amounts and before the call or transmission is initiated. For example, a calling card that allows a user to access a long distance telecommunications network for the purpose of making international calls through a pay phone is a telephone prepaid calling card. The sale of a telephone prepaid calling card is taxed as the sale of tangible personal property. A card, pin number, access code or similar device that allows a user to access only a specific network, or that is intended for use with a specific user account or device (e.g. to recharge a prepaid wireless telephone account) is a prepaid telecommunications service and is taxed as a telecommunications service. [The term "telephone prepaid calling card" does not include a card sold by mechanical means for consideration of one dollar or less.]

(16) Voice over Internet Protocol (VoIP)--A telecommunication service where a phone call is transmitted over a data network. The term "Internet Protocol" is a catchall phrase for the protocols and technologies of encoding a voice call that allow the voice call to be slotted in between data on a data network, including the Internet, a company's Intranet, or any other type of data network.

(b) Taxable telecommunications services. The total amount charged for a taxable telecommunications service is subject to sales tax. [Services taxable.] Sales tax is due on a charge for the following:

- (1) basic local exchange telephone services [service];
- (2) enhanced services such as [metro service, extended area service, multiline hunting, and PBX trunk; etc.];
- (3) auxiliary services such as [call waiting and call forwarding; etc.];
- (4) intrastate long-distance telecommunications services;
- (5) ~~[(4)]~~ interstate long-distance telecommunications services that are both originated from, and billed to, a telephone number or billing or service address within Texas such that [; therefore,] if a call originates in Texas and is billed to a Texas service address, the charge is taxable even if the invoice, statement, or other demand for payment is sent to an address in another state;
- (6) ~~[(5)]~~ mobile telecommunications services for which the place of primary use is located in Texas [paging and mobile telephone services];
- (7) ~~[(6)]~~ telegraph services that are both originated from, and billed to, a person within Texas;
- (8) ~~[(7)]~~ a telecommunications [taxable] service paid for by the insertion of [coins or] tokens, credit or debit card into a coin-operated telephone located in Texas;
- (9) ~~[(8)]~~ subject to subsection (e) of this section, the [sale,] lease, [or] rental, or other charges for telecommunication equipment including separately stated installation charges. Separately stated charges for labor to install wiring will not be taxable if the wiring is installed in new structures or residences in such manner as to become a part of the realty. Separately stated charges for labor to install wiring in existing nonresidential real property are taxable. See §3.291 and §3.357 of this title (relating to Contractors; Nonresidential Real Property Repair, [and] Remodeling, and Restoration; Real Property Maintenance) for additional information. If charges for the installation of wiring and

charges for the equipment are not separated, the total charge will be treated as a sale and installation of tangible personal property. Equipment sold by a telecommunications service provider is subject to sales or use tax and is not taxed as part of the telecommunications service if the service provider separately invoices the sale of the equipment. The sale of equipment is not separately invoiced if it is identified on the same bill, receipt or invoice as the sale of the telecommunications service, even if it is identified as a separate line item on the same bill, receipt, or invoice;[-]

(10) ~~[(9)]~~ installation of telecommunications services, including [service connection fees [fee]]; [and]

(11) ~~[(40)]~~ private communication [line] services[; including charges for related equipment]. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of the interoffice channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. If there is a single charge for a private communication service in which the customer has channel termination points both inside and outside of Texas, the apportionment can also be determined by dividing the number of customer channel termination points in Texas by the total number of customer channel termination points to establish the percentage of the charge subject to state sales tax for Texas. Other apportionment methods may be used by the seller if first approved in writing by the comptroller; and[-]

(12) charges that are passed through to a purchaser for federal, state, or local taxes or fees that are imposed on the seller of the telecommunications service rather than on the purchaser. Such charges are a cost or expense of the seller and are included in the total price subject to sales tax.

~~[(c)]~~ Sellers of telecommunications services on which sales tax must be collected and remitted will owe a telecommunications infrastructure fund assessment and should refer to §3.1101 of this title (relating to Telecommunications Receipts, Assessment Determination, Due Date for Assessment Report and Payment, Auditing, Records, and Assessments);

(c) ~~[(d)]~~ Nontaxable services [Services not taxable]. Sales tax is not due on charges for:

- (1) interstate long-distance telecommunications services that are not both originated from, and billed to, a telephone number or billing or service address within Texas. Records must clearly distinguish between taxable and exempt long-distance services;
- (2) broadcasts by commercial radio or television stations licensed or regulated by the FCC. See §3.313 of this title (relating to Cable Television Service) for the tax status of cable television services [service];
- (3) telecommunications services purchased for resale;
- (4) telegraph services that [which] are not both originated from and billed to a person within Texas;[-]
- (5) mobile telecommunications services for which the place of primary use is located outside of Texas; and
- (6) charges for federal, state, or local taxes or fees that are imposed on the purchaser rather than on the seller of the telecommunications service. For example, no sales tax is due on a separately stated charge for federal excise tax or for 9-1-1 Emergency Service Fee and

9-1-1 Equalization Surcharge because these taxes or fees are imposed on the purchaser and are not a cost of doing business of the seller.

(d) ~~[(e)]~~ Billing and records requirements. If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the purchaser's bill or invoice from a provider of telecommunications services, the combined charge is subject to tax unless the service provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges ~~[Charges separately stated. Charges for items listed in subsection (b) of this section must be separately stated from those charges listed in subsection (e) of this section].~~

(e) ~~[(f)]~~ Resale of tangible personal property. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(1) Transfer of tangible personal property to the care, custody and control of the purchaser. A telecommunications service provider may claim a resale exemption on the purchase of tangible ~~[Tangible]~~ personal property that is transferred by the telecommunications service provider ~~[of the taxable service]~~ to the care, custody, and control of the purchaser. A telecommunications service provider must collect sales tax on charges ~~[customer will be considered to be resold, and may be purchased tax free by the provider of the taxable service. Sales tax must be collected by the provider of the taxable service from the customer on the charge]~~ for such items. ~~[See §3.285 of this title (relating to Resale Certificate; Sales for Resale).]~~

(2) Wireless voice communication devices. A person may claim a resale exemption on the purchase of a cell phone or other wireless voice communication device as an integral part of a taxable service, regardless of whether there is a separate charge for the wireless voice communication device or whether the purchaser is the provider of the taxable telecommunications service, if payment for the service is a condition for receiving the wireless voice communication device. For example, if a person signs a contract for the purchase of telecommunications services at the location of a retailer and the retailer sells the person a cell phone as a condition of entering the contract for the telecommunications services that will be provided by someone other than the retailer, the retailer can purchase the cell phone tax free with a properly completed resale certificate.

(f) ~~[(g)]~~ Resale of a telecommunications service. See §3.285 of this title.

(1) Sales tax is not due on the charge by one telephone company to another for providing access to a local exchange network. The telecommunications service provider must collect sales tax ~~[Sales tax must be collected]~~ from the final purchaser ~~[consumer]~~ on the total charge for the taxable service including the charge for access. ~~[See §3.285 of this title (relating to Resale Certificate; Sales for Resale).]~~

(2) A telecommunications service may be purchased tax free for resale if resold by the purchaser as an integral part of a taxable service. The purchaser must give the service provider a properly completed resale certificate to purchase the telecommunications service tax free for resale. A telecommunications service is an integral part of a taxable service if the telecommunications service is essential to the performance of the taxable service and without which the taxable service could not be rendered. For example, an Internet access service provider (ISP) may give a resale certificate when purchasing the dedicated dial-up line services to be used by the ISP's customers. However, the ISP must pay sales tax when purchasing its own personal

or business use of telecommunications services such as charges for its office phone lines, mobile telecommunications services for its traveling salespersons, or for a customer service call-center.

(3) A mobile telecommunications service provider may purchase roaming services from another mobile telecommunications service provider tax free for resale to its customers that are using the roaming services. For example, an out-of-state mobile telecommunications service provider purchases roaming services in Texas for resale to its out-of-state customers (i.e., persons who have a place of primary use outside Texas). To be exempt from sales tax, the out-of-state mobile telecommunications service provider must give the seller of the roaming services a resale certificate showing either a Texas sales tax permit number or the sales tax permit number or registration number issued by its home state. Effective for billing periods that begin on or after August 1, 2002, these out-of-state customers do not owe Texas sales tax on roaming charges incurred while visiting or traveling through Texas.

(g) ~~[(h)]~~ Taxable purchases. Subject to the provisions of subsections (e) and (f) of this section, a telecommunications service provider owes sales ~~[Sales]~~ or use tax ~~[is due]~~ on all tangible personal property and services that are used to provide the ~~[taxable]~~ service ~~[but not transferred to the care, custody, and control of the customer]~~. See §3.346 of this title (relating to Use Tax), §3.281 of this title (relating to Records Required; Information Required), and §3.282 of this title (relating to Auditing Taxpayer Records).

(h) ~~[(i)]~~ Local tax.

(1) Subject to the provisions of paragraph (2) of this subsection, jurisdictions that impose local sales and use taxes may repeal the local sales tax exemption on telecommunications services. See Publication 96-339 (Jurisdictions That Impose Local Sales Tax on Telecommunications Services) for a list of jurisdictions that impose local taxes on telecommunications services.

(2) Taxable interstate long-distance telecommunications are only subject to state sales tax. Local taxing jurisdictions may not repeal the local sales tax exemption on interstate long-distance telecommunications services.

(3) ~~[(4)]~~ A seller of taxable telecommunications services, with the exception of mobile telecommunications and prepaid wireless services as explained in paragraph (4) of this subsection, must collect local sales ~~[City, county, special purpose district, Metropolitan Transit Authority (MTA), and city transit department (CTD)]~~ taxes based on ~~[on telecommunications services are allocated to]~~ the location from which the telecommunications service ~~[each]~~ originates. If the point of origin cannot be determined, the telecommunications service provider must collect local taxes based on ~~[tax is allocated to]~~ the address to which the telecommunications service ~~[each]~~ is billed. ~~[See §3.372 and §3.422 of this title (relating to Requirements for Adopting or Abolishing City Tax; Requirements for Adopting or Abolishing MTA Tax) for information on how a city, county, or authority may impose local tax on telecommunications services. (Note: The local sales tax exemptions on interstate long-distance telecommunications services may not be repealed.)]~~

(4) A seller of mobile telecommunications services to include prepaid wireless services must collect local sales taxes based on the place of primary use as defined in subsection (a)(7) of this section and per Tax Code, §151.061. The location from which a mobile telecommunications service originates does not determine whether the service is exempt or is subject to state or local sales tax.

(5) A seller of telephone prepaid calling cards is not selling a telecommunications service and must collect state and local sales or

use tax on the sale of the cards in the same manner as sales of other tangible personal property.

{(2) The governing board of a taxing entity created under the Transportation Code, Chapter 451, may not repeal the application of the exemption on telecommunications services unless the repeal is first approved by a majority of the members of the governing body of each municipality that created the taxing entity. A reinstatement of the exemption must be approved in the same manner.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001415

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-0387



## SUBCHAPTER MM. TEXAS PREPAID WIRELESS 9-1-1 EMERGENCY SERVICE FEE

### 34 TAC §3.1271

The Comptroller of Public Accounts proposes new §3.1271, concerning prepaid wireless 9-1-1 emergency service fee. The new section will be in new Subchapter MM, Texas Prepaid Wireless 9-1-1 Emergency Service Fee. The new section implements House Bill 1831, 81st Legislature, 2009, which creates this new fee, effective June 1, 2010, through the creation of Health and Safety Code, §771.0712. The fee is imposed at the rate of 2.0% of the purchase price of prepaid wireless telecommunications services that permit access to 9-1-1 emergency services that are purchased through whatever means. The comptroller is required to adopt rules to implement the new fee by June 1, 2010 and administer the collection of the fee in a manner consistent with Tax Code, Chapter 151.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by implementing the provisions of House Bill 1831 regarding agencies that provide 9-1-1 emergency services. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Health and Safety Code, §771.0712(b), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Health and Safety Code, §771.0712.

The new section implements Health and Safety Code, §771.0712 (Prepaid 9-1-1 Emergency Service Fee).

### §3.1271. Prepaid Wireless 9-1-1 Emergency Service Fee.

(a) Application of Tax Code, Chapter 151. The statutory provisions, administrative rules, and agency policies applicable to Chapter 151 will apply as deemed necessary by the comptroller for administration of the fee to the extent not addressed expressly in this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Consumer" means a customer, person, or purchaser who makes a retail purchase of prepaid wireless telecommunication services.

(2) "Fee" means the prepaid wireless 9-1-1 emergency service fee a seller collects from a consumer in the amount required under Health and Safety Code, §771.0712.

(3) "Prepaid wireless telecommunication service" means a mobile telecommunication service that allows a person to access 9-1-1 emergency communication services and is paid for in advance.

(4) "Retail purchase" means an individual purchase of a prepaid wireless telecommunication service from a seller for any purpose other than resale.

(5) "Sale for resale" means a sale of a prepaid wireless telecommunication service to a purchaser who acquires the service for the purpose of reselling it in the United States in the normal course of business either in the form or condition in which it is purchased or as an integral part of a taxable item as defined by Tax Code, Chapter 151.

(6) "Seller" means a person who sells prepaid wireless telecommunication services to any person. The term includes "seller" and "retailer" as defined by Tax Code, §151.008.

(7) "Mobile telecommunications service" means the provision of a commercial mobile radio service, as defined in 47 C.F.R. 20.3 of the Federal Communications Commission's (FCC) regulations in effect on June 1, 1999 under the Mobil Telecommunications Sourcing Act (4 U.S.C. §§116-126). The term includes cellular telecommunications services, personal communications services (PCS), wireless, prepaid wireless, specialized mobile radio services, wireless voice over Internet protocol services, and paging services. The term does not include telephone prepaid calling cards or air-ground radio telephone services as defined in 47 C.F.R. 22.99 of FCC regulations in effect on June 1, 1999.

(8) "Wireless service provider" means a provider of commercial mobile service under the Federal Telecommunication Act of 1996, §332(d), (47 U.S.C. §151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

(A) a service whose users do not have access to 9-1-1 emergency services;

(B) a communication channel used only for data transmission;

(C) a wireless roaming service or other nonlocal radio access line service; or

(D) a private telecommunications service.

(c) Registration.

(1) Every seller of prepaid wireless telecommunication services must register to collect and remit the fee by completing and submitting to the comptroller Form AP-201, Texas Application for Sales and Use Tax Permit. A seller's registration number for purposes of collecting the fee will be the same as the seller's sales and use tax permit number.

(2) A bond or other security may be required at the comptroller's discretion.

(d) Imposition and collection of fee.

(1) Effective June 1, 2010, the fee shall be collected by the seller from the purchaser at the time of and with respect to each retail sale of prepaid wireless telecommunication services in this state and with respect to each sale of prepaid wireless telecommunication services whose primary place of use is in this state.

(2) The fee is 2.0% of the purchase price of each prepaid wireless telecommunication service without regard to whether the service is purchased in person, by telephone, over the Internet, or by any other method.

(3) The amount of the fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller and is not subject to any other tax or fee imposed by Tax Code, Title 2.

(4) A seller of prepaid wireless telecommunication services or wireless service provider owes the fee on:

(A) the retail price; or

(B) the value of a prepaid wireless telecommunication service not sold at retail but used by a person in Texas.

(5) If charges for items that are not subject to the fee are combined with and not separately stated from charges subject to the fee on the consumer bill or invoice for prepaid wireless telecommunication services, the combined charge is subject to the fee unless the seller can identify the portion of the charges that are not subject to the fee through the seller's books and records kept in the regular course of business. If the charges that are not subject to the fee cannot reasonably be identified, all charges related to the sale are subject to the fee. The seller has the burden of proving what charges are not subject to the fee.

(6) No exemptions except for sales for resale. With the exception of a sale for resale as explained in paragraph (7) of this subsection, no exemptions from the fee are allowed. For example, although a governmental entity as defined by Tax Code, §151.309 may be exempt from paying sales and use tax on a prepaid wireless telecommunication service, the seller of the service must still collect the fee from the exempt governmental entity.

(7) Sales for resale.

(A) Any person who sells prepaid wireless telecommunication services in this state must collect the fee on services sold unless a valid and properly completed resale certificate is received from the purchaser. Evidence that a purchaser is properly registered with the comptroller for the collection of the fee is not sufficient to relieve the seller from the responsibility for collecting the fee without the issuance of a properly completed certificate. A properly completed resale certificate must show:

(i) the name and address of the purchaser;

(ii) the registration number held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after

which time the resale certificate must be renewed to show the permanent registration number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1, or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of a purchase for resale;

(iii) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller and the date; and

(iv) the name and address of the seller.

(B) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the prepaid wireless telecommunication services within the geographical limits of the United States of America, its territories, and possessions.

(C) The seller must act in good faith when accepting the resale certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the fee.

(D) A person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading the fee is guilty of a criminal offense. An offense is:

(i) a Class C misdemeanor if the tax evaded by the invalid certificate is less than \$20;

(ii) a Class B misdemeanor if the tax evaded by the invalid certificate is \$20 or more but less than \$200;

(iii) a Class A misdemeanor if the tax evaded by the invalid certificate is \$200 or more but less than \$750;

(iv) a felony of the third degree if the tax evaded by the invalid certificate is \$750 or more but less than \$20,000; and

(v) a felony of the second degree if the tax evaded by the invalid certificate is \$20,000 or more.

(e) Sourcing. A sale of a prepaid wireless telecommunication services is deemed to have occurred in this state when the transaction occurs at a business location in this state or if the transaction would be treated as occurring in the state as provided for under Tax Code, §151.061. Each seller of a prepaid wireless telecommunication service must determine the primary place of use for each purchase of prepaid wireless telecommunication service made by telephone and over the Internet. The fee is due when the primary place of use is in Texas. The term "primary place of use" has the same meaning as in Tax Code, §151.061.

(f) Reports and due dates.

(1) All sellers of prepaid wireless telecommunication services must report collections of the fee on comptroller form 54-104 (Texas Prepaid Wireless 9-1-1 Emergency Service Fee Report). The fact that a seller does not receive the form or does not receive the correct form from the comptroller does not relieve the seller of the responsibility of filing a report and remitting the fees collected.

(2) Each report is due on or before the 30th day of the month following the end of each calendar quarter which is January 30, April 30, July 30, and October 30. The first report is due on or before July 30, 2010 and will cover the calendar month of June. Reports and payments due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(A) Reports submitted by mail must be postmarked on or before the due date to be considered timely.



(B) Reports filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(C) Electronic Funds Transfer (EFT) system payments. To be considered timely, a payment submitted through an EFT system must enter into the applicable EFT program by 6:00 p.m., central time, on any day on or before the due date other than a weekend or banking holiday.

(D) A person who files tax reports and makes payments through the electronic data interchange (EDI) system must enter the payment information into the EDI system by 2:30 p.m., central time, to meet the 6:00 p.m. central time requirement that is noted in subparagraph (A) of this paragraph.

(E) If the due date falls on a weekend or banking holiday, payment information must be submitted by the time parameters noted in subparagraphs (A) and (B) of this paragraph on the business date prior to the due date to be considered timely. For more information see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(3) Extensions due to disasters. The comptroller may grant to a person whom the comptroller finds to be a victim of a disaster an extension of not more than 90 days to make or file a report or pay the fee. The person owing the fee may file a written request for an extension at any time before the expiration of 90 days after the original due date. If an extension is granted, interest on the unpaid fee does not begin to accrue until the day after the day on which the extension expires and penalties are assessed and determined as though the last day of the extension were the original due date.

(g) Seller compensation. A seller may deduct and retain 2.0% of the fees it collects during each report period to offset its costs in collecting and remitting the fee.

(h) Penalties.

(1) A penalty of 5.0% of the fee due shall be imposed upon a seller who fails to timely remit the fee imposed or file a report required by this section.

(2) If a seller fails to file the report or remit the fee within 30 days after the day on which the fee or report is due, an additional 5.0% penalty shall be imposed.

(3) An additional penalty of 50% of the fee due shall be imposed if it is determined that:

(A) the failure to remit the fee or file a report when due was a result of fraud or an intent to evade the fee; or

(B) the seller alters, destroys, or conceals any record, document, or thing, or presents to the comptroller any altered or fraudulent record, document, or thing, or otherwise engages in fraudulent conduct, for the apparent purpose of affecting the course or outcome of an audit, investigation, redetermination, or other proceeding before the comptroller.

(i) Interest. Interest due on unpaid, unremitted, or delinquent fees shall be imposed as provided by Tax Code, §111.060.

(j) Records required.

(1) All persons subject to collecting the fee must keep adequate records in order to accurately determine the amount of fee due for a period of four years.

(2) The comptroller has the right to examine, copy, and photograph any records or equipment of any person who is liable for

collecting the fee in order to verify the accuracy or any report or to determine the fee liability in the event that no report is filed.

(3) A person commits a criminal offense by intentionally or knowingly concealing, destroying, entering false information in, or failing to make an entry in, records that are required to be made or kept under this section.

(k) Audits. Records of sellers or purchasers may be audited by the comptroller or the comptroller's representative. The audit will be performed by examining any records, books, or other information which are maintained by the seller or purchaser. If the records are inadequate or do not accurately reflect the fees due, the auditor will base the audit report on the best available information.

(l) Statute of limitations for assessments.

(1) Unless otherwise provided by this section, the comptroller has four years from the date the fee becomes due and payable in which to assess a liability for unpaid fees. Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension. The agreement must comply with the provisions of Tax Code, §111.203. An extension applies only to the periods specifically mentioned in the agreement. Any assessment or refund request pertaining to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been authorized.

(2) In cases of fraud, or if reports have not been filed, the statute of limitations does not apply and the comptroller may assess and collect fees, penalties, and interest at any time. The statute of limitations does not apply when information contained in the report of a taxpayer contains a gross error and the amount of fee due and payable after correction of the error is 25% or more greater than the amount initially reported.

(3) The statute of limitations does not apply to any period for which a taxpayer has filed a timely claim for a refund. If, while investigating the merits of the refund claim, the comptroller determines that additional fee is due, an assessment may be made for that period until a final decision is made on the claim for refund.

(4) A redetermination proceeding does not toll the statute of limitations, except for the issues contested.

(m) Refund claims by registered sellers.

(1) No fees, penalties, or interest will be refunded by the comptroller to a registered seller who has collected the fee in error from a purchaser until all such fees are first refunded or credited with the purchaser's written consent to the person from whom they were collected. A registered seller is entitled to claim a credit or request a refund of fees equal to the amount of fees refunded to a purchaser when the purchaser receives a full or partial refund of the sales price of a returned item subject to the fee.

(2) After the registered seller has refunded or credited the fee to the account of the purchaser, the registered seller may then seek reimbursement from the comptroller in accordance with the procedures that are outlined in paragraph (4) of this subsection, or take a credit on a future report filed by the seller in the amount refunded or credited to the account of the purchaser.

(3) Reports and documentation. The registered seller must retain all documentation that is necessary to support the refund or credit claimed.

(4) Requirements for refund claims filed with the comptroller.

(A) A person who requests a refund from the comptroller must submit a claim in writing that identifies the period during which the claimed overpayment was made and must state fully and in detail the specific grounds upon which the claim is based, including, at a minimum, each of the following about each transaction upon which a refund is requested:

- (i) purchaser or seller's name, as appropriate;
- (ii) invoice number, if applicable;
- (iii) date of transaction;
- (iv) description of the item(s) purchased or sold;
- (v) specific reason for the refund, such as applicable statutory authority;
- (vi) purchase or sale amount subject to refund;
- (vii) total amount of fee refund requested; and
- (viii) if requesting a refund for fees paid in error to a registered seller, the seller's name, address and sales fee registration number or information that allows the comptroller to identify the seller's fee permit number.

(B) A person must submit the claim within the applicable limitations period as provided by paragraph (7) of this subsection.

(C) Supporting documentation required by the comptroller to verify any refund claimed or credit taken must be maintained and made available upon request.

(5) Interest.

(A) Except as provided by subparagraph (B) of this paragraph, in a comptroller's final decision on a claim for refund, interest accrues at the rate that is set in Tax Code, §111.064, on the amount that is found to be erroneously paid:

- (i) beginning on the later of 60 days after the date of payment or the due date of the fee report; and
- (ii) ending on, as determined by the comptroller, either:
  - (I) the date of allowance of credit that results from a final decision that the comptroller has issued, or from an audit; or
  - (II) a date that is not more than 10 days before the date of the refund warrant.

(B) Credits taken by a fee payer on the fee payer's report do not accrue interest.

(6) Denial of refund.

(A) If the comptroller determines that the claim for refund cannot be granted either partially or fully, then the comptroller will notify the claimant of the denial. Claimant may request a refund hearing within 30 days of the denial.

(B) A person may not re-file a refund claim for the same transaction or item, fee type, period, and ground or reason that was previously denied by the comptroller.

(7) Statute of limitations for refund claims.

(A) A claim for refund must be made within four years from the date on which the fee was due and payable.

(B) A claim for refund for a fee paid pursuant to a jeopardy deficiency determination must be made by the later of:

(i) four years from the date on which the fee was due and payable; or

(ii) six months after the date on which the jeopardy deficiency determination for the periods becomes final, and is subject to the restriction imposed by subparagraph (C) of this paragraph.

(C) A refund claim filed within six months after the date on which a jeopardy deficiency determination becomes final is within the limitations period for all items included in the jeopardy deficiency determination. A refund claim for all other items is subject to the limitations period in subparagraph (A) of this paragraph.

(D) Extension of limitations period. Before the expiration of the statute of limitations, the comptroller and a fee-payer may agree in writing to extend the limitation period in accordance with Tax Code, §111.203. An extension applies only to the periods specifically mentioned in the agreement and no single extension agreement may be for a period that exceeds 24 months from the date of the expiration of the limitations period being extended. Any refund request pertaining to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent refund requests as if no extension had been authorized.

(E) A refund proceeding does not toll the statute of limitations, except for the issues contested.

(F) Failure to file a claim within the limitations prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(G) The informal review of a refund claim by the comptroller is not a hearing or contested case and does not toll the limitation period for any subsequent claim for refund on the same period and type of fee for which the claim was fully or partially denied.

(n) Payments under protest. A person subject to collecting this fee may file suit under Tax Code, Chapter 112, Subchapter B. A person who intends to file a protest suit must submit to the comptroller a letter of protest with the payment of the fee that is the subject of the protest. See §3.9(e) of this title. The letter of protest must state fully and in detail every reason that the fee-payer contends that the assessment is unlawful or unauthorized and must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be deemed to have been made under protest. For the fee-payer's convenience, the comptroller will advise the fee-payer of the amount of payment under protest that the comptroller has received and the date of the payment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001414

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 475-0387

◆ ◆ ◆

# **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

## **PART 9. TEXAS COMMISSION ON JAIL STANDARDS**

### **CHAPTER 251. GENERAL**

#### **37 TAC §251.6**

The Commission on Jail Standards proposes an amendment to §251.6, regarding complaints received by the agency in order to comply with changes mandated by the most recent Sunset review.

Adan Munoz, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

#### *§251.6. Complaints.*

(a) General. A complaint received by the commission concerning facilities under the commission's purview or the commission and/or its procedures or functions shall be investigated and resolved according to commission internal policies and procedures. All inspection reports, plan reviews and bills for services issued by the commission shall provide instructions for directing complaints to the commission regarding commission functions and procedures.

(b) Filing a Complaint. An individual who has a complaint about a facility under the commission's purview or the commission may file a complaint in any written format or use the commission's prescribed complaint form. The complaint form is available on the agency website and may be submitted electronically or may be obtained by contacting the commission through the agency website, telephone, fax, email, or written request.

(c) Public Disclosure. A complaint against a facility under the commission's purview or the commission will only be made available for public disclosure in accordance with Government Code Chapter 552.

[All inspection reports, plan reviews and bills for services issued by the commission shall provide instructions for directing complaints to the commission regarding commission functions and procedures.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 18, 2010.

TRD-201001388

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 463-8236



### **CHAPTER 299. VARIANCE PROCEDURE RULES**

#### **37 TAC §299.3**

The Commission on Jail Standards proposes an amendment to §299.3, concerning the contents of an application for variance.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

#### *§299.3. Contents.*

An application for variance shall include:

(1) - (5) (No change.)

(6) the length of time for which the variance is being requested; ~~and~~

(7) any additional information or attachments demonstrating justification for the variance; ~~and~~[-]

(8) utilization of alternatives to incarceration, including diversion initiatives and reentry efforts to reduce recidivism.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 18, 2010.

TRD-201001389

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: May 2, 2010

For further information, please call: (512) 463-8236



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 3. TEXAS YOUTH COMMISSION

#### CHAPTER 87. TREATMENT

#### SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

##### 37 TAC §§87.69, §87.79

The Texas Youth Commission withdraws the emergency repeal of §87.69 and §87.79 which appeared in the February 5, 2010, issue of the *Texas Register* (35 TexReg 723).

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001402

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Effective date: April 15, 2010

For further information, please call: (512) 424-6014

##### 37 TAC §§87.69, 87.79, 87.81

The Texas Youth Commission withdraws the emergency new §§87.69, 87.79, and 87.81 which appeared in the February 5, 2010, issue of the *Texas Register* (35 TexReg 723).

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001403

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Effective date: April 15, 2010

For further information, please call: (512) 424-6014

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 1. LIBRARY DEVELOPMENT

##### SUBCHAPTER F. SYSTEM ADVISORY COUNCIL

###### 13 TAC §§1.111 - 1.120, 1.123

The Texas State Library and Archives Commission adopts the repeal of 13 TAC §§1.111 - 1.120 and 1.123, regarding the administrative operation of library system advisory councils, without changes to the text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7478). No comments were received regarding the repeal of the rules.

The 81st Legislature has approved new statutory language (HB 3756) authorizing larger councils, eliminating the requirement for lay representatives, and directing the agency to adopt rules on the administrative operation of advisory councils as guidance for systems to use in developing their by-laws. The changes are numerous and require repeal of the existing rules and adoption of new rules.

These repeals are adopted under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system, §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program, and §441.130 that authorizes the commission to adopt rules on the administrative operation of advisory councils.

The adopted repeal affects Government Code §§441.123, 441.136, and 441.130.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2010.

TRD-201001396

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Effective date: April 8, 2010

Proposal publication date: October 30, 2009

For further information, please call: (512) 463-5459



###### 13 TAC §§1.111 - 1.121, 1.123

The Texas State Library and Archives Commission adopts new rules, 13 TAC §§1.111 - 1.121 and 1.123, regarding the administrative operation of major resource system advisory councils, with one change to the text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7478). Sections 1.111, 1.113 - 1.121, and 1.123 are adopted without changes and will not be republished. Section 1.112 is adopted with changes to clarify that library directors may be the library representative. This rule establishes who may be the member library representative. One comment was received.

Comment: One person commented, "I am in favor of the changes proposed. I know that our library has difficulty finding people willing to be lay representatives. Generally, we have retired citizens who may not be aware of the current changes to technology specific to libraries."

Agency response: The agency agrees with the comment.

The new rules are adopted under the authority of Government Code §441.123 of the Library Systems Act that directs the commission to establish and develop a state library system, §441.130 that authorizes major resource system advisory councils, and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The adopted new rules affect Government Code §§441.123, 441.130 and 441.136.

###### §1.112. Member Library Representatives.

Library directors of accredited libraries shall designate a member library representative and one alternate. Representatives may include board members, others qualified by knowledge and/or experience to represent a library, the library director, and library staff. The representative is the voting member for the library and is eligible for advisory council membership. A system may adopt by-laws specifying member library representative term limits or attendance requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2010.

TRD-201001397

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Effective date: April 8, 2010

Proposal publication date: October 30, 2009

For further information, please call: (512) 463-5459



## CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

### 13 TAC §§8.1 - 8.5

The Texas State Library and Archives Commission adopts amendments to 13 TAC §§8.1 - 8.5, regarding the TexShare Library Consortium, proposed in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7480). Section 8.2 and §8.5 are adopted without changes and will not be republished. Sections 8.1, 8.3 and 8.4 are adopted with changes. The revisions establish criteria for admitting libraries into the TexShare consortium as members or as affiliated members, and provide guidelines regarding the organization and structure of the advisory board as specified in HB 3756, enacted by the 81st Legislature. The criteria ensure that the admittance of libraries as members or as affiliated members enhance resource-sharing services to the consortium members.

Two comments were received from medical university librarians suggesting that Texas hospitals, regardless of the presence of a hospital library, be made eligible to participate in TexShare resource sharing services.

*Agency response:* The statutes governing the agency do not authorize it to provide this service to hospitals.

One comment was received from a public librarian suggesting that the agency should consider bringing all libraries into a shared catalog system that has worked successfully at the regional level.

*Agency response:* Initiating a program of this nature does not require a change in these sections of the agency's rules.

One comment was received from the Texas Library Association suggesting that the rule provide a concrete definition as to what constitutes a library "group."

*Agency response:* While the rules do provide a definition of a "nonprofit library group," the agency agrees that the definition could be clarified. In response, the rules have been changed to replace the term "nonprofit library group" with "nonprofit library collective," in order to make a clearer statement of commonality among members and to add to the list of criteria necessary for a successful petition for membership or affiliate membership status the requirement that the nonprofit library collective has a designated institution or organization that speaks on its behalf regarding membership eligibility issues.

Two comments were received from academic librarians that had a concern about for-profit and non-profit education organizations being able to combine into one group to negotiate an optimal solution with the online database vendors.

*Agency response:* This concern was confirmed in the discussions with the TexShare core database vendors, therefore for-profit libraries were not added as an eligible membership organization.

Four comments were received from a public librarian, an academic librarian, a K-12 school librarian, and a special librarian suggesting that libraries associated with for-profit organizations be eligible for TexShare membership; seven comments were received from five academic librarians, one public librarian, and the Texas Library Association opposing eligibility of for-profit organizations. One comment from an academic librarian encouraged membership eligibility for for-profit organizations that provide public access to their libraries and/or provide public ser-

vices such as free wi-fi access at their public outlets. Comments in favor of admitting for-profit organizations into the TexShare Consortium include: (1) For-profit organizations have a need for information; the information TexShare provides will enable their financial success and additional contributions to the state; (2) As significant financial contributors to the State of Texas economy, for-profit organizations should have the right to TexShare membership; (3) The greatest benefit to Texans can be achieved by including the greatest number of libraries; and (4) For-profits bring unique, specialized collections to the table and are usually willing to share from their collections. Comments opposing for-profit organizations include: (1) Texas tax dollars should not be spent to benefit private, for-profit companies; (2) Including for-profit organizations would cause database licensing to increase in complexity and in cost; (3) Some database vendors have agreements with publishers that prohibit them from offering their products to the for-profit market. These products could not be offered to the consortium if for-profit organizations are included in the database licenses; (4) There are so many for-profit entities that adding them to TexShare could result in a consortium too large to manage effectively; and (5) For-profits may circumvent database licensing rules and either resell the databases or the copyrighted contents derived from the databases.

*Agency response:* Agency staff has researched the impact of including for-profit organizations on database licenses and have determined that if for-profit organizations would become eligible for membership, the consortium would either (A) have to limit the number and type of database products available to the consortium or (B) exclude the for-profit members from participation in certain database products. At its meeting on January 25, 2010, the TexShare Advisory Board recommended a conservative approach to TexShare membership expansion, endorsing the revised rules that would allow libraries associated with non-profit institutions to become TexShare members. The board reiterated its willingness to consider expanding membership to libraries associated with for-profit institutions in future rules revisions. Per §441.229 of the Texas Government Code, the commission may allow designated libraries to participate in a group purchasing agreement only to the extent that the commission may do so efficiently and in a manner that enhances resource-sharing services to the consortium members. The agency will monitor this situation in the future.

The amendments are adopted under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The amended section affects Government Code, §§441.221 - 441.230.

#### §8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Institution of higher education--An institution of higher education as defined by Education Code, §61.003, and a private or independent institution of higher education as defined by Education Code, §61.003.

(2) Annual Report Survey--A report submitted to the commission each year on the member institution of higher education's participation in TexShare programs, the member library of clinical medicine's participation in TexShare programs, the member library of nonprofit library collective's participation, or in fulfillment of a public library's system membership requirements.

(3) Commission--The Texas State Library and Archives Commission.

(4) Consortium--The TexShare Library Consortium.

(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as those services set forth in §1.81(b)(4)(C) and (D) of this title (relating to Quantitative Standards for Accreditation of Library).

(B) Extensive collections in the fields of clinical medicine and the history of Medicine--A minimum of 10,000 library resources in print and in electronic format, comprised of books, journal titles, technical reports, and databases on clinical medicine and the history of medicine.

(8) Public school--Any school accredited under Education Code, Subchapter D, Accreditation Status (§§39.071 - 39.076).

(9) Public school library--An organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--A public school staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(11) Certified staff member--A public school staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(12) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and the Internet community.

(13) Consortium membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(b)(2) or (3) of this chapter (relating to Consortium Membership and Affiliated Membership). Libraries meeting these requirements are referred to as "members" or "consortium members."

(14) Affiliated membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(b)(1) of this chapter. Libraries admitted under this section are referred to as "affiliated members."

(15) Nonprofit library--A library not already qualified for consortium membership by virtue of being a public library, library of clinical medicine, or library affiliated with an institution of higher education that is:

(A) Established as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) An administrative subdivision of a nonprofit corporation established under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(C) Located in Texas and operated by a unit of local, state, or federal government; or

(D) Located in Texas and a designated tribal community library.

(16) Nonprofit library collective--Two or more nonprofit libraries that share a set of common interests and have a defined membership structure.

### §8.3. *Consortium Membership and Affiliated Membership.*

(a) Nonprofit library collective petition for membership or affiliated membership status:

(1) A nonprofit library collective that meets the following criteria may petition the Director and Librarian for affiliated membership status. The Director and Librarian will review the petition to determine that all the following criteria are met. Based upon the findings of the review, the Director and Librarian will either grant or deny the petition.

(A) The nonprofit library collective's affiliation with the consortium is funded by the nonprofit libraries comprising the collective or by a sustainable funding source.

(B) The nonprofit library collective has a designated institution or organization authorized to petition the agency on behalf of and to speak on its behalf with regards to membership eligibility issues.

(C) The nonprofit library collective's affiliation will enhance resource-sharing services to the consortium members.

(2) A nonprofit library collective that meets the following criteria may petition the Director and Librarian for membership status in the consortia. The Director and Librarian will review the petition to determine that all the following criteria are met. Based upon the findings of the review, the Director and Librarian will either grant or deny the petition.

(A) The nonprofit library collective has had affiliated membership status in the consortium for a minimum of two years.

(B) During its affiliation with TexShare, members of the nonprofit library collective have participated in two or more TexShare programs.

(C) The nonprofit library collective's membership in the consortium is supported through sustainable funding.

(D) The nonprofit library collective's membership will enhance resource-sharing services to the consortium members.

(b) Eligibility of individual institutions or libraries:

(1) Affiliated membership is open to nonprofit libraries meeting the following requirements:

(A) The nonprofit library is a member of a nonprofit library collective that has successfully petitioned the Director and Librarian for affiliated membership status.

(B) The nonprofit library certifies that it meets the minimum standards of accreditation established for the nonprofit library collective in its petition for affiliated membership status.

(C) The nonprofit library certifies that it will abide by the funding requirements established for the nonprofit library collective in its petition for affiliated membership status.

(2) Membership in the consortium is open to all institutions of higher education as determined by the Texas Higher Education Coordinating Board, and realized through the libraries that serve those institutions, to libraries of clinical medicine, and to all public libraries that are members of the state library system, as defined in Government Code, §441.127.

(3) Membership in the consortium is open to nonprofit libraries meeting the following requirements:

(A) The nonprofit library is a member of a nonprofit library collective that has successfully petitioned the Director and Librarian for membership status.

(B) The nonprofit library provides certification that it meets the minimum standards of accreditation established for the nonprofit library collective in its petition for membership status.

(c) Agreement. Public libraries will be TexShare Members so long as they remain members of the state library system. Institutions of higher education, libraries of clinical medicine, and nonprofit libraries must file a membership agreement, signed by a duly authorized administrative official, on joining the consortium. Affiliated member libraries must file an affiliated membership agreement specifying in which programs of the consortium they may participate and any limitations to participation that will apply. Participation in specific programs of the consortium may require additional agreements and fees.

(d) Annual Report Survey. Libraries of member institutions of higher education, member libraries of clinical medicine, and member and affiliated member libraries of nonprofit library collectives shall file a current and complete annual report survey for the preceding year with the commission by January 15 of each year. Public libraries shall file their state library system reports as required by §1.85 of this title (relating to Annual Report).

(e) Multiple Libraries. For institutions of higher education, the unit of membership in the TexShare Library Consortium shall be the institution. Institutions of higher education, as determined by the Texas Higher Education Coordinating Board, with libraries in multiple locations shall apply as a single unit. Community colleges shall apply per their certification by the Texas Higher Education Coordinating Board, in accordance with Government Code §61.063. Public libraries with branches shall apply as a single unit. For libraries of clinical medicine, the unit of membership shall be the non-profit corporation; those having multiple locations shall apply as a single unit. The various locations served by a non-profit corporation must be fully governed and owned by that non-profit corporation in order to qualify under the non-profit corporation's membership. Non-profit corporations that amalgamate other, independently-administered organizations that are not fully governed and owned by that nonprofit corporation must submit a separate membership application for each independent organization regardless of any pooled or central funding. For nonprofit library collectives, the unit of membership or affiliated membership shall be determined during the petitioning process.

(f) Suspension of membership.

(1) Institutions of higher education, libraries of clinical medicine, and nonprofit libraries: Membership or affiliated membership will be automatically renewed for each state fiscal year, provided that the library of clinical medicine, nonprofit library, or institution of higher education continues to meet the definition required in subsection (b) of this section; and an annual report survey has been filed as required by subsection (d) of this section.

(2) Public libraries: Public libraries shall remain TexShare members so long as they remain members of the state library system.

(3) Institutions of higher education, libraries of clinical medicine, nonprofit libraries, and public libraries that no longer meet the definition in subsection (b) of this section, or are otherwise not qualified, will be suspended from membership or affiliated membership. They may re-join TexShare when they meet the definition in subsection (b) of this section.

(g) Members may receive services or be assessed fees based on demographic, financial, or other information, as reflected in the latest statistics from the National Center for Educational Statistics, the Texas Higher Education Coordinating Board, the Independent Colleges and Universities of Texas, the most current statistical data reported to the commission in the Texas academic library survey, the Texas public library annual report (filed as required by subsection (d) of this section.), or from statistical information received directly from the member or affiliated member and certified by the member or affiliated member as accurate.

(h) Fees. Some consortium services are supported by fees paid by participants. Fees will be set by the Director and Librarian for different categories of consortium services, in consideration of the costs involved in providing these services to member libraries.

(i) Complaints regarding fee assessments, denial of membership, or denial of affiliated membership will be processed in accordance with procedures outlined in §2.55 of this title (relating to Protest Procedure).

#### §8.4. Advisory Board.

(a) The commission shall appoint an advisory board to advise the commission on matters relating to the consortium. At least two members must be representatives of the general public. Composition of the board will be representative of the various types of libraries comprising the membership. Members of the advisory board must be qualified by training and experience to advise the commission on policy.

(b) Members of the advisory board shall be chosen to present as much variety as possible in geographic distribution and size and type of institution.

(c) The advisory board shall meet at least twice a year regarding consortium programs and plans at the call of the advisory board's chairman or of the Director and Librarian.

(d) Members of the advisory board serve three-year terms beginning September 1.

(e) A member of the advisory board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(f) The advisory board shall elect a chairman and a vice chairman at the first meeting of each fiscal year.

(g) The advisory board may recommend to the Director and Librarian and/or to the commission that:

(1) the consortium enters into cooperative projects with entities other than public libraries, libraries of clinical medicine, or institutions of higher education; and/or

(2) the consortium admit or deny membership status or affiliated membership status to nonprofit library collectives.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2010.



TRD-201001395  
Edward Seidenberg  
Deputy Director  
Texas State Library and Archives Commission  
Effective date: April 8, 2010  
Proposal publication date: October 30, 2009  
For further information, please call: (512) 463-5459



## **TITLE 22. EXAMINING BOARDS**

### **PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### **CHAPTER 515. LICENSES**

##### **22 TAC §515.5**

The Texas State Board of Public Accountancy adopts an amendment to §515.5, concerning Reinstatement of a License, without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 774) and will not be republished.

The section establishes the criteria by which a licensee can renew their license after the license has expired or has been revoked.

The amendment will permit a licensee to enter into an agreed consent order for the payment of back fees and penalties.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2010.

TRD-201001384  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: April 7, 2010  
Proposal publication date: February 5, 2010  
For further information, please call: (512) 305-7842



##### **22 TAC §515.9**

The Texas State Board of Public Accountancy adopts an amendment to §515.9, concerning Collection of License Fees Following Disciplinary Action, without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 775) and will not be republished.

The section establishes how license fees and penalties are calculated and can be collected after a licensee has been reinstated following a suspension or revocation of their certificate or license.

The amendment will transfer subsection (c) to §515.5.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2010.

TRD-201001386  
J. Randel (Jerry) Hill  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: April 7, 2010  
Proposal publication date: February 5, 2010  
For further information, please call: (512) 305-7842



#### **CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM**

##### **22 TAC §520.3**

The Texas State Board of Public Accountancy adopts an amendment to §520.3, concerning Institutions, without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 777) and will not be republished.

The section informs the public and universities of the eligibility, approval, responsibilities and reporting obligations of the universities wishing to participate in the scholarship program.

The amendment will clarify school eligibility for Fifth-Year Accounting Students Scholarship Program Funding.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2010.

TRD-201001385  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: April 7, 2010  
Proposal publication date: February 5, 2010  
For further information, please call: (512) 305-7842

◆   ◆   ◆

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 3. TEXAS YOUTH COMMISSION

#### CHAPTER 87. TREATMENT

##### SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

The Texas Youth Commission (TYC) adopts the repeal of §87.69 (concerning commitment to state mental hospitals) and §87.79 (concerning discharge of mentally ill and mentally retarded youth). TYC simultaneously adopts the following new rules: §87.69 (concerning court-ordered mental health services), §87.79 (concerning discharge of non-sentenced offenders with mental illness or mental retardation) and §87.81 (concerning referral of sentenced offenders to court for mental health services). The repeal and new sections are adopted without changes to the proposal as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 857).

The justification for the repeal and new rules is the provision to TYC youth of a more comprehensive system of mental health referrals, continuity of care requirements, and court-ordered treatment, as well as enhanced public safety due to an increased level of executive oversight and new requirements for mandatory filings for court-ordered treatment for mental health discharges.

The repeal of §87.69 and §87.79 allows for new rules to be adopted in their place.

New §87.69 establishes the criteria and process TYC will use to refer youth for emergency mental health detention as well as court-ordered inpatient and outpatient mental health services.

New §87.79 establishes the criteria and process TYC will use to discharge youth with mental illness or mental retardation who are unable to progress in TYC's rehabilitation programs. In accordance with House Bill 4451 enacted by the 81st Texas Legislature, the new rule requires that all youth discharged under the rule will be referred for continuity of care services to the Texas Correctional Office on Offenders with Medical or Mental Impairments. Additionally, the new rule requires TYC to file an application for court-ordered inpatient or outpatient psychiatric care for each youth discharged due to mental illness. The new rule also establishes that the executive director is the final approval authority for discharges due to mental illness or mental retardation.

In accordance with authority provided under House Bill 4451, new §87.81 establishes a process for TYC to petition the committing juvenile court to initiate mental health commitment proceedings for youth committed to TYC under determinate sentences. The new rule establishes the criteria TYC will use when determining whether to file such a petition.

No comments were received regarding adoption of the repeal or new rules.

#### 37 TAC §87.69, §87.79

The repeal is adopted under Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001400

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Effective date: April 15, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 424-6014

◆   ◆   ◆

#### 37 TAC §§87.69, 87.79, 87.81

The new rules are adopted under (1) Human Resources Code §61.076, which authorizes TYC to provide any necessary medical or psychiatric treatment to youth committed to its care; (2) Human Resources Code §61.077, which requires TYC to discharge non-sentenced offenders who have completed the minimum length of stay and who are unable to progress in rehabilitation programs because of mental illness or mental retardation; (3) Human Resources Code §61.0772, which requires TYC to make appropriate referrals and/or court filings for mental health services prior to discharging a youth with mental illness or mental retardation; and (4) Human Resources Code §61.0773, which provides TYC with the authority to petition the committing court for the initiation of mental health commitment proceedings for youth committed to TYC under a determinate sentence.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2010.

TRD-201001401

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Effective date: April 15, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 424-6014

◆   ◆   ◆

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Agency Rule Review Plan

Texas State Library and Archives Commission

### Title 13, Part 1

TRD-201001394

Filed: March 19, 2010



## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 109 are organized under the following subchapters: Subchapter A, Budgeting, Accounting, Financial Reporting, and Auditing for School Districts; Subchapter B, Texas Education Agency Audit Functions; Subchapter C, Adoptions by Reference; and Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 109, Subchapters A-D, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-201001440

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: March 24, 2010



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 109 are organized under the following subchapter: Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 109, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 109, Subchapter AA, begins April 2, 2010, and ends May 3, 2010. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-201001441

Christina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: March 24, 2010



## Adopted Rule Reviews

Texas State Soil and Water Conservation Board

### Title 31, Part 17

Pursuant to the notice of proposed rule review published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9490), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 518, Subchapter B, §518.5, Historically Underutilized Business Program, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No public comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts the rule since it governs the State Board's program for conducting business with historically underutilized businesses. This completes the State Board's review of 31 TAC Chapter 518, Subchapter B, Historically Underutilized Business Program.

TRD-201001433

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: March 23, 2010



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

Request for Applications: Young Farmer Grant Program

### Statement of Purpose.

Pursuant to the Texas Agricultural Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

### Submission Dates/Locations.

Forms required for submitting an application are available by accessing TDA's website at: [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov) or by emailing TAFA at [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov). One hard copy and one electronic copy of the application in Microsoft Word format must arrive no later than 5:00 p.m. on May 14, 2010 to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agriculture Finance Authority, Attn: Allen Regehr, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701, Phone No. (512) 936-0273 or (512) 463-9932, Fax No. (888) 216-9867

Mailing Address: Texas Department of Agriculture, Texas Agriculture Finance Authority Attn: Allen Regehr, P.O. Box 12847, Austin, TX 78711

The electronic copy should be e-mailed to [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov).

Proposals must set forth accurate and complete information as required by this Request For Applications (RFA). Oral modifications will not be considered.

**Eligibility.** Grant applications will be accepted from any person 18 years or older but younger than 46 years of age that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

### Application Requirements.

#### *Funding Parameters:*

The TAFA Board of Directors (Board) anticipates funding in an amount of \$100,000 for grants not to exceed \$10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFA Board reserves the right to fully or partially fund any particular grant application.

#### *Form Requirements:*

Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov) or by e-mailing the TAFA at: [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov).

#### *Budget Information:*

YFGP projects are paid on a cost reimbursement basis.

1. **Eligible Expenses.** Generally, eligible expenses include those costs that are necessary and reasonable for proper and efficient performance and administration of a project. Expenses must be properly documented with sufficient detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits of those that perform work for the grant recipient;

Materials and direct operating expenses - equipment that costs less than \$5,000 per unit, animals, seed, fertilizer, irrigation, etc.;

Equipment - nonexpendable, tangible personal property having a useful life of less than one year and an acquisition cost of less than \$5,000; and

Other expenses - any expenses that do not fall into the above categories;

Indirect expenses - the YFGP limits reimbursable indirect expenses to 10% of the grant award.

2. **Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions for charitable, political, or lobbying purposes;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Expenses that are not adequately documented;

Value of applicant's own services;

Land; and

Personal property or other capital items with a useful life of more than one year and a cost of more than \$5,000.

3. **Description of the Budget.** Present an overall project budget and include the following items in the budget description:

A. *Wages:* Grant funds may be used for directly supporting salaries and wages of employees, but not for the value of your own services.

B. *Materials and Direct Operating Expenses:* The grant may be used for expenses that are directly related to the day-to-day operation of the project, if those expenses are not included in any other budget category, and if those expenses have an acquisition cost of less than \$5,000 per unit. An applicant must allocate costs on a prorated basis for shared usage.

C. *Equipment:* Eligible equipment is defined as tangible personal property having a useful life of less than one year and an acquisition cost of \$5,000 or less per unit. Applicants must submit a list of all proposed equipment purchases for approval. Recipients are not authorized to purchase any equipment until they have received written approval to do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The YFGP may refuse any request for equipment. Decisions regarding equipment purchases

are made based on whether or not the grant recipient has demonstrated that the requested equipment will be purchased at a reasonable cost and is essential to the successful operation of the project.

**D. Professional/Contractual:** Any contract or agreement between a grant recipient and a third party must be in writing and consistent with Texas law. Recipients must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

**E. Indirect Expenses:** Grant funds may be used for indirect costs up to 10% of the amount of the grant award.

**F. Additional Budget Information:** Provide additional information that will be helpful to the TAFE Board in evaluating a grant application, including justification for equipment purchases, a list of subcontractors and amounts, a list of key personnel and salaries to be paid with the grant, and a description of other large expenditures.

**G. Documentation of Employment Status.** Applicant should be prepared to furnish documentation of lawful employment status for each employee included in personnel costs for the project.

#### **Evaluation of Applications.**

The TAFE Board will be the final evaluator of applications. Prior to consideration by the board, applications will be scored by a panel of reviewers. The review panel will be asked to score the applications in several categories that will assist the TAFE Board in making final funding decisions. The Board is not required to make awards based solely on the review panel's scoring or ranking of the applications. The Board may consider other factors in making grant awards under the program, including, without limitation, the quality of the application, applicant's need for financial assistance, the project's ability to create, enhance, or sustain applicant's agricultural operation, the project's ability to improve overall agricultural productivity in Texas, and the project's ability to increase the number of agricultural enterprises in Texas that are owned and operated by young farmers.

#### **Award Information and Notification.**

The TAFE Board will approve projects for funding. The TAFE Board reserves the right to accept or reject any or all applications. TDA and TAFE are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFE will pay for any cost or expense incurred by applicant or any other entity in responding to this RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to this RFA.

Public announcements and written notifications of funding rounds will be made available to the public. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

#### **General Compliance Information.**

1. Prior to accepting the Young Farmer grant and signing the grant agreement, the recipient will be provided a copy of TDA reporting requirements for review. This document will explain billing procedures, annual reporting requirements, procedures for requesting a change in the scope or budget for a project, and other miscellaneous items.

2. Any delegation by a grant recipient to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the recipient of responsibility for performance.

3. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and TAFE.

4. Any information or documentation submitted to TDA in connection with a grant application is subject to disclosure under the Texas Public Information Act.

5. While TDA and TAFE attempt to observe the strictest confidence in handling applications, they cannot guarantee complete confidentiality on any matter. The confidentiality of applicant's "proprietary data", if so designated, shall be strictly observed to the extent permitted by Texas law, including the Texas Public Information Act.

6. The ownership and disposition of all patentable products and intellectual property inventories shall be subject to the agreement of the grant recipient and TDA.

7. Funded projects must remain in full compliance with state and federal law and regulations. Noncompliance may result in termination.

8. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the grant agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit, or other action started prior to the expiration of the three-year period involving the project's records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect project locations and to obtain full information regarding all project activities.

9. If a grant recipient has a financial audit performed in any year during which the recipient receives grant funds, the recipient shall, upon TDA's request, based on reasonable suspicion of misuse of grant funds, provide a complete copy of such audit and all information related thereto to TDA and/or TAFE, including the audit transmittal letter, management letter, and any schedules in which grant funds are analyzed, discussed, included, or reported.

10. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: [www.governor.state.tx.us/divisions/state-grants/guidelines/files/UGMS012001.doc](http://www.governor.state.tx.us/divisions/state-grants/guidelines/files/UGMS012001.doc). Grant management guidelines for YFGP grants will be provided to a grant recipient after an award has been made.

**For any questions**, please contact Mr. Allen Regehr at (512) 463-9932 or by e-mail at [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov).

TRD-201001445

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: March 24, 2010

### **Texas Appraiser Licensing and Certification Board**

#### **Correction of Error**

The Texas Appraiser Licensing and Certification Board adopted new 22 TAC §153.24, Complaint Processing, in the March 12, 2010, issue of the *Texas Register* (35 TexReg 2157). The rule, including Figure: 22 TAC §153.24(9), the Penalty Matrix table, was adopted with changes and republished. However, the agency submitted the wrong version of

the Penalty Matrix table for publication and the table that appears on page 2212 is incorrect. The corrected version is as follows:

Figure: 22 TAC §153.24(9)

### Penalty Matrix

<b>Nature of Violation(s)</b>	<b>Range of Recommended Actions</b>
1 <sup>st</sup> occurrence – violation(s) of the Act, Rules, or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	First-time violator letter with acknowledgement of violation or administrative penalty of \$100 to \$500 per violation, or both
1 <sup>st</sup> occurrence – violation(s) of the Act, Rules, or USPAP that, individually or collectively, constitute evidence of a serious but remediable deficiency	First-time violator letter with agreement to take remedial course work, first-time violator letter with agreement to adopt preventive policies and procedures, or administrative penalty of \$250 to \$1,000 per violation, or any combination thereof
1 <sup>st</sup> occurrence – violation(s) of the Act, Rules, or USPAP that, individually or collectively, was done willfully or in a grossly negligent manner	Suspension or revocation and an administrative penalty of \$500 to \$1,500 per violation
2 <sup>nd</sup> occurrence – violation(s) of the Act, Rules, or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	Administrative penalty of \$500 to \$1,500 per violation with requirement to take remedial course work or to adopt preventive policies and procedures, or both
2 <sup>nd</sup> occurrence – violation(s) of the Act, Rules, or USPAP that, individually or collectively, constitute evidence of a serious but remediable deficiency	Administrative penalty of \$500 to \$1,500 per violation plus requirement to take remedial in-class course work and to adopt preventive policies and procedures
2 <sup>nd</sup> occurrence – violation(s) of the Act, Rules, or USPAP that, individually or collectively, were done willfully or in a grossly negligent manner	Revocation and administrative penalty of \$1,500 per violation
3 <sup>rd</sup> occurrence – violation(s) of the Act, Rules, or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	Administrative penalty of \$1,000 to \$1,500 per violation with requirement to take remedial in-class course work or to adopt preventive policies and procedures, or both
3 <sup>rd</sup> occurrence – violation(s) of the Act, Rules, or USPAP that, individually or collectively, constitute evidence of a serious but remediable deficiency	Administrative penalty of \$1,500 per violation, or revocation or suspension for up to 180 days with requirement to take remedial in-class course work and to adopt preventive policies and procedures, or both
Unlicensed activity	Administrative penalty of \$1,500 to \$5,000

TRD-201001383

### Department of Assistive and Rehabilitative Services

Notice of Contract Award

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the award of a contract resulting from Request for Proposal Number 538-10-17077 for Contract structure consulting services for the DARS Early Childhood Intervention (ECI) division to: Public Consulting Group, 504 Lavaca, Suite 930, Austin, Texas 78701. The value

of the contract is \$80,000. The period of performance is March 12, 2010 - August 31, 2010.

The Notification of Consulting Procurement was published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9499).

TRD-201001437

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: March 24, 2010



#### Notice of Contract Award

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the award of a contract resulting from Request for Proposal Number 538-10-17616 for Funding Infrastructure consulting services for the DARS Early Childhood Intervention (ECI) division to: Public Consulting Group, 504 Lavaca, Suite 930, Austin, Texas 78701. The value of the contract is \$150,000. The period of performance is March 12, 2010 - August 31, 2010.

The Notification of Consulting Procurement was published in the January 29, 2010, issue of the *Texas Register* (35 TexReg 675).

TRD-201001438

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: March 24, 2010



### Office of the Attorney General

#### Notice of Settlement of a Texas Health and Safety Code and Texas Water Code Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Settlement Agreement in *State of Texas v. Lester Saucier, Jr., a/k/a Amcar Water System*, Cause No. D-1-GV-09-001984, 201st Judicial District of Travis County.

Background: Defendant Lester Saucier, Jr., a/k/a Amcar Water System, is the owner of a public water system located in Orange, Texas. A suit was filed alleging violations of the Texas Water Code and Texas Health and Safety Code for the defendant's failure to operate the water system in compliance with applicable statutes and Texas Commission on Environmental Quality rules. The suit seeks injunctive relief, civil penalties, and attorney's fees.

Nature of Settlement: The settlement awards the State \$10,000.00 in civil penalties and \$10,000.00 in attorney's fees. The settlement also awards injunctive relief.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment and written comments on the pro-

posed settlement should be directed to Kellie E. Billings, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201001404

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 22, 2010



#### Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Settlement Agreement in *Harris County, Texas and State of Texas v. Magdaleno Rios, individually, Maria Del Carmen Rios, Individually, and d/b/a Nation Waste, Inc.*; Cause No. 2007-73897, in the 270th Judicial District, Harris County District Court.

Background: This suit alleges violations of the rules promulgated by the Texas Commission on Environmental Quality under the Texas Health and Safety Code related to the storage and processing of solid waste. The Defendants are Magdaleno Rios, Maria Del Carmen Rios, and Nation Waste, Inc. The suit seeks civil penalties, injunctive relief, attorney's fees, and court costs.

Nature of the Settlement: The settlement awards \$50,000 in civil penalties to be divided between Harris County and the State of Texas and \$11,000 in attorney's fees and court costs for the State of Texas. The Judgment also requires that the Defendants comply with rules of Texas Commission on Environmental Quality regarding recycling operations and prohibits Defendants from storing, processing, removing, or disposing of solid waste without authorization from the Texas Commission on Environmental Quality.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Mark Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201001447

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 24, 2010

## Capital Area Rural Transportation System

### Request for Proposals

The Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the construction of an intermodal transit facility in Taylor, Texas.

Request for Proposals (RFP) and Construction Documents will be available at CARTS Headquarters facility located at 2010 E. 6th Street, Austin, Texas 78702-6050 beginning at 2:00 p.m., Tuesday, April 6, 2010. A \$200.00 refundable deposit check payable to CARTS will be required for each set, with a maximum of four sets per company.

A non-mandatory pre-proposal meeting will be held at the same address at 2:00 p.m., Tuesday, April 13, 2010.

The schedule is:

Tuesday, April 6, 2010: 2:00 p.m. - RFP Documents/CDs ready to be picked up by contractors.

Tuesday, April 13, 2010: 2:00 p.m. - Pre-Proposal Conference at CARTS.

Tuesday, April 27, 2010: 2:00 p.m. - Deadline for Proposal Questions.

Friday, April 30, 2010 - Responses Distributed via electronic-mail only.

Thursday, May 6, 2010: 2:00 p.m. - Proposals Due at CARTS.

Proposals will be evaluated on cost, qualifications, experience, and the quality and content of the submittal.

TRD-201001399

Dave Marsh

General Manager

Capital Area Rural Transportation System

Filed: March 22, 2010

## Coastal Coordination Council

### Notice of Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 12, 2010, through March 18, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 24, 2010. The public comment period for this project will close at 5:00 p.m. on April 23, 2010.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Dow Chemical;** Location: The project route for two 16-inch pipelines extends from a point north of Dow Plant B across State Highway 332, crosses Oyster Creek, and continues to a point near Gate B at the Dow Stratton Ridge Facility. The project route for one 8-inch pipeline extends from Dow Plant A to Dow Plant B. The project can

be located on the U.S.G.S. quadrangle map entitled: Lake Jackson, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 268603; Northing: 3212395. Project Description: The applicant proposes to construct two underground 16-inch plastic pipelines and one 8-inch steel pipeline along the 11.2-mile route. There will be 13.13 acres of temporary impacts to palustrine jurisdictional wetlands within the right-of-way for workspace and 2.23 acres of permanent impacts to forested jurisdictional wetlands resulting from the pipeline placement. The applicant proposes to compensate for unavoidable impacts to forested wetlands by transferring ownership of 339 acres of forested land currently owned by Dow Chemical, Inc., containing 15.643 acres palustrine forested wetlands and emergent wetlands, via the National Fish and Wildlife Foundation, to the United States Fish and Wildlife Service. CCC Project No.: 10-0065-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01289 Rev. is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Chaparral Energy, LLC;** Location: The project is located in State Tracts (STs) 12, 13, 19, 20, and 25 in Mesquite Bay, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Mesquite Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 2618257.444; Northing: 3201645.085. Project Description: The applicant proposes to drill and erect structures in order to produce a new oil and gas well in ST 19. In addition, the applicant proposes to perform maintenance dredging, via the hydraulic method, on a 5,415-foot-long x 70-foot-wide portion of the Wynne Channel in order to access two existing well sites in STs 12 and 13. Maintenance dredging will result in a finished grade of -6.0 feet MLLW. CCC Project No.: 10-0073-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00086 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Texas General Land Office;** Location: The project is located in Rollover Pass adjacent to the Gulf of Mexico, off State Highway (SH) 87 and near Gilchrist, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: High Island and Frozen Point, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting 354612.138 Northing: 3265251.64; Latitude: 29.5084 Longitude: -94.5000. Project Description: The applicant proposes to impact approximately 11 acres of tidal waters during the discharge of approximately 140,000 cubic yards of sand to fill Rollover Pass. Approximately 11 acres of tidal waters of the United States, including one tidal pool created by Hurricane Ike, would be impacted as a result of the proposed filling activities. The proposed project will use a hydraulic dredge connected to a floating pipeline to pump material to Rollover Pass. Heavy equipment would be used to grade and infill the pass to meet elevations of adjacent land. CCC Project No.: 10-0077-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-00833 Rev. is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Port of Corpus Christi Authority (PCCA);** Location: The project is located on land, near the Corpus Christi Ship Channel Inner Harbor and Nueces River, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Annville and Corpus Christi, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 651092.95; Northing: 3077949.72.



Project Description: The applicant proposes to construct an approximate 19,000 feet of new and 30,400 feet of future multi-track rail facilities and associated switch, service, and inspection access roads within a 45-acre site northeast from the Viola Channel Turning Basin bulkhead line and south of the Fulton Rail Lead. The Viola Yard will provide for the arrival, storage, and switching of rail cars for distribution to and the PCCA intermodal complex. An approximate 2.47 acres of jurisdictional wetlands would be filled as a result of this project. CCC Project No.: 10-0081-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-00647 Rev. is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-201001442

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 24, 2010

◆ ◆ ◆  
**Comptroller of Public Accounts**

Local Sales Tax Rate Change Effective April 1, 2010

A 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2010 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Village of the Hills (Travis Co)	2227187	.002500	.077500

A 1 1/4 percent local sales and use tax that includes the 1 percent city sales and use tax, and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2010 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Panorama Village (Montgomery Co)	2170139	.012500	.075000

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2010 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Horseshoe Bay (Burnet Co)	2027072	.017500	.080000
Horseshoe Bay (Llano Co)	2027072	.017500	.080000

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will become effective April 1, 2010 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Nolanville (Bell Co)	2014095	.012500	.080000

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will become effective April 1, 2010 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Tahoka (Lynn Co)	2153014	.015000	.082500

The 3/8 percent special purpose district sales and use tax for Emergency Services Districts as required under Section 776.0751(c) of the Health and Safety Code will be ceased effective April 1, 2010 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>
Comal County Emergency Services District No. 1	5046541	.000000

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2010 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Ovilla Municipal Development District	5070504	.002500	SEE NOTE 1

A 1 percent special purpose district sales and use tax will become effective April 1, 2010 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Harris County Improvement District No. 18	5101758	.010000	SEE NOTE 2

A 1 1/4 percent special purpose district sales and use tax will become effective April 1, 2010 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Driftwood Economic Development Municipal Management District	5105558	.012500	SEE NOTE 3

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2010 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
East Montgomery County Improvement District A	5170692	.015000	SEE NOTE 4
Travis County Emergency Services District No. 11-A	5227613	.015000	SEE NOTE 5

A 2 percent special purpose district sales and use tax will become effective April 1, 2010 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Aliana Management District	5079505	.020000	SEE NOTE 6
Harris County Emergency Services District No. 14	5101767	.020000	SEE NOTE 7

### **Addendum**

#### **Local Sales Tax Rate Changes Effective January 1, 2010**

A 1/2 percent special purpose district sales and use tax became effective January 1, 2010 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
East Montgomery County Improvement District Economic Development Zone 2	5170683	.005000	SEE NOTE 8

NOTE 1: The Ovilla Municipal Development District is within the boundaries of the City of Ovilla and within the city's extra-territorial jurisdiction. The district is partially located within Zip Codes 75154 and 76065. Contact the district representative at (972) 617-7262 for additional boundary information.

NOTE 2: The Harris County Improvement District No. 18 is in the north-central portion of Harris County. The district includes a portion of the Houston MTA, which has a transit sales and use tax, but the district does not include any area within the City of Houston. The unincorporated area of Harris County in ZIP Code 77389 is partially located within the district. Contact the district representative at (713) 860-6400 for additional boundary information.

NOTE 3: The Driftwood Economic Development Municipal Management District is located in the east-central portion of Hays County, which has a county sales and use tax. The unincorporated areas of Hays

County in ZIP Codes 78610, and 78619 are partially located within the district. Contact the district representative at (512) 435-2300 for additional boundary information.

NOTE 4: The East Montgomery County Improvement District A (EMCID A) is located in southeastern Montgomery County and follows the boundaries of the New Caney and Splendora independent school districts but excludes the cities of Patton Village and Splendora and any area within the city of Houston. The District includes the unincorporated areas known as New Caney, Porter, Roman Forest and Woodbranch. The Montgomery County Emergency Services District No. 6 and 7, excluding the area that overlaps the East Montgomery County Improvement District Economic Development Zones No. 1 and 2, are partially located in EMCID A. The unincorporated area of Montgomery County in ZIP Codes 77302, 77327, 77339, 77357, 77365 and 77372, excluding the area in Montgomery County Emergency Services District 12-A, the areas of the East Montgomery County Improvement District Economic Development Zones No. 1 and 2, and the portion of Montgomery County Emergency Services District No. 6 and 7 overlapped by Zones No. 1 and 2, are partially located within EMCID A. Contact the district representative at (281) 354-4419 for additional boundary information.

NOTE 5: The Travis County Emergency Services District No. 11-A is the unincorporated area of the Travis County Emergency Services District No. 11. It is located in the southeastern portion of Travis County. The East Travis Gateway Library District, which has a special purpose district sales tax, is located entirely within the district. The unincorporated areas of Travis County in Zip Codes 78610, 78612, 78617, 78719, 78742, 78744 and 78747 are partially located in the Travis County Emergency Services District No. 11-A. Contact the district representative at (512) 243-3477 for additional boundary information.

NOTE 6: The Aliana Management District is located in the northeast portion of Fort Bend County. The unincorporated area of Fort Bend County in Zip Code 77407 is partially located within the Aliana Management District. Contact the district representative at (713) 653-5735 for additional boundary information.

NOTE 7: The Harris County Emergency Services District No. 14 is in the eastern portion of Harris County. The district does not include any area within the city of Houston or the Houston MTA. The unincorporated areas of Harris County in Zip Codes 77520 and 77562 are partially located within the district. Contact the district representative at (281) 802-9088 for additional boundary information.

NOTE 8: The East Montgomery County Improvement District Economic Development Zone No. 2 is located in the southeastern portion of Montgomery County. The zone is located entirely within the East Montgomery County Improvement District and the Montgomery County Emergency Services District No. 7. Both of these districts have a special purpose district sales tax. The unincorporated area of Montgomery County in Zip Code 77357 is partially located within the Economic Development Zone No. 2. Contact the district representative at (281) 354-4419 for additional boundary information.

TRD-201001418  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: March 23, 2010

◆ ◆ ◆

## Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/29/10 - 04/04/10 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/29/10 - 04/04/10 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment, or other similar purpose.

TRD-201001429

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 23, 2010

## Texas Commission on Environmental Quality

### Correction of Error

The Texas Commission on Environmental Quality (TCEQ) adopted amendments to 30 TAC Chapter 101, General Air Quality Rules (Rule Project No. 2009-006-101-EN), which appeared in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2556).

The TCEQ requested this correction because the notice as published was submitted in error. Under the Public Comment section of the rule preamble, Environmental Defense Fund (EDF) and Galveston Houston Association for Smog Prevention (GHASP) were incorrectly included in the list of oral commenters. In addition, 8-Hour Ozone SIP Coalition (Coalition) was incorrectly omitted from the list of oral commenters. EDF and GHASP submitted only written comments regarding this rule project, while the Coalition gave oral comment and submitted written comments regarding the rule.

TRD-201001420

### Enforcement Orders

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2008-0080-AIR-E on March 11, 2010 assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maulesh Shah dba Speedy Mart, Docket No. 2008-0565-PST-E on March 11, 2010 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2008-0734-AIR-E on March 11, 2010 assessing \$30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hong Nguyen dba Lee Dry Cleaners III, Docket No. 2008-1130-DCL-E on March 11, 2010 assessing \$2,088 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2008-1474-AIR-E on March 11, 2010 assessing \$29,252 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank Roberts and Linda Roberts, Docket No. 2008-1870-MSW-E on March 11, 2010 assessing \$2,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Basell USA Inc., Docket No. 2009-0182-AIR-E on March 11, 2010 assessing \$2,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Preston/Mery Properties, Inc., Docket No. 2009-0282-PST-E on March 11, 2010 assessing \$7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2009-0511-AIR-E on March 11, 2010 assessing \$24,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Genesis Quality Aggregates, Ltd., Docket No. 2009-0544-AIR-E on March 11, 2010 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Felix Jackson dba Jackson Brothers Ranch, Docket No. 2009-0604-AIR-E on March 11, 2010 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ali Farasat dba Alpine Used Auto Parts, Docket No. 2009-0690-WQ-E on March 11, 2010 assessing \$29,580 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2009-0806-AIR-E on March 11, 2010 assessing \$30,000 in administrative penalties with \$6,000 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Aviation Administration, Docket No. 2009-0829-PST-E on March 11, 2010 assessing \$4,375 in administrative penalties with \$875 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RP25 Development, LP, Docket No. 2009-0855-WQ-E on March 11, 2010 assessing \$14,560 in administrative penalties with \$2,912 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC (formerly known as Huntsman Petrochemical Corporation), Docket No. 2009-0894-AIR-E on March 11, 2010 assessing \$68,725 in administrative penalties with \$13,745 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mack A. Tims dba Texas Lawn Ranger, Docket No. 2009-1053-LII-E on March 11, 2010 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AMK Properties LLC, Docket No. 2009-1123-PWS-E on March 11, 2010 assessing \$3,599 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HITCHCOCK BUSINESS INC. dba Power Mart 11, Docket No. 2009-1209-PST-E on March 11, 2010 assessing \$2,644 in administrative penalties with \$528 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wortham, Docket No. 2009-1228-MWD-E on March 11, 2010 assessing \$16,725 in administrative penalties with \$3,345 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Luther Yarbrough and Edwina Yarbrough, Docket No. 2009-1231-PST-E on March 11, 2010 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PostOak Retailer's Inc. dba Welcome Food Mart, Docket No. 2009-1232-PST-E on March 11, 2010 assessing \$5,315 in administrative penalties with \$1,063 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RTI Hot Mix, LTD., Docket No. 2009-1255-EAQ-E on March 11, 2010 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prism Gas Systems I, L.P., Docket No. 2009-1265-AIR-E on March 11, 2010 assessing \$58,197 in administrative penalties with \$11,639 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Dairy Transport, L.P., Docket No. 2009-1266-IWD-E on March 11, 2010 assessing \$7,140 in administrative penalties with \$1,428 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Vanover and Rhonda Vanover dba Casey Homes Estate Public Water Supply, Docket No. 2009-1274-PWS-E on March 11, 2010 assessing \$4,408 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VAM USA, Docket No. 2009-1308-IWD-E on March 11, 2010 assessing \$33,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.L.C. Water Supply Corporation, Docket No. 2009-1315-MLM-E on March 11, 2010 assessing \$12,215 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alisha Ann Dunkin, Docket No. 2009-1370-PST-E on March 11, 2010 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tu Huynh dba Lyna Marine Supply, Docket No. 2009-1378-AIR-E on March 11, 2010 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Tomlin and Vicki Tomlin, Docket No. 2009-1384-MSW-E on March 11, 2010 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Rock Field Services, L.P., Docket No. 2009-1395-AIR-E on March 11, 2010 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W & J INVESTMENT, INC. dba All Days Chevron Store, Docket No. 2009-1409-PST-E on March 11, 2010 assessing \$2,376 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 154, Docket No. 2009-1416-PST-E on March 11, 2010 assessing \$3,542 in administrative penalties with \$708 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Irion County, Docket No. 2009-1422-MLM-E on March 11, 2010 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2009-1428-MWD-E on March 11, 2010 assessing \$8,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Transcontinental Gas Pipe Line Company, LLC, Docket No. 2009-1445-AIR-E on March 11, 2010 assessing \$34,285 in administrative penalties with \$6,857 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2009-1446-AIR-E on March 11, 2010 assessing \$20,550 in administrative penalties with \$4,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Rock Field Services, L.P., Docket No. 2009-1447-AIR-E on March 11, 2010 assessing \$5,700 in administrative penalties with \$1,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia, Inc., Docket No. 2009-1450-AIR-E on March 11, 2010 assessing \$23,025 in administrative penalties with \$4,605 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross Country Water Supply Corporation, Docket No. 2009-1452-PWS-E on March 11, 2010 assessing \$635 in administrative penalties with \$127 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemical Lime, Ltd., Docket No. 2009-1455-AIR-E on March 11, 2010 assessing \$2,825 in administrative penalties with \$565 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Milam Water Supply Corporation, Docket No. 2009-1458-PWS-E on March 11, 2010 assessing \$635 in administrative penalties with \$127 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prairie Hill Water Supply Corporation, Docket No. 2009-1459-PWS-E on March 11, 2010 assessing \$930 in administrative penalties with \$186 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bryan, Docket No. 2009-1465-PWS-E on March 11, 2010 assessing \$4,341 in administrative penalties with \$868 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James W. Weaver dba Val-U Cleaners, Docket No. 2009-1472-DCL-E on March 11, 2010 assessing \$3,738 in administrative penalties with \$747 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Absolutely Outdoors, Ltd. dba Seber Lane Recycling Center, Docket No. 2009-1477-MSW-E on March 11, 2010 assessing \$2,215 in administrative penalties with \$443 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2009-1481-AIR-E on March 11, 2010 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FUELCON MANAGEMENT LLC dba Horizon, Docket No. 2009-1500-PST-E on March 11, 2010 assessing \$3,406 in administrative penalties with \$681 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell 11700, Ltd., Docket No. 2009-1508-EAQ-E on March 11, 2010 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kaufman County Municipal Utility District No. 12, Docket No. 2009-1511-MWD-E on March 11, 2010 assessing \$2,740 in administrative penalties with \$548 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Real Holdings Group, LLC, Docket No. 2009-1520-MWD-E on March 11, 2010 assessing \$9,250 in administrative penalties with \$1,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spring Valley Water Supply Corporation, Docket No. 2009-1550-PWS-E on March 11, 2010 assessing \$802 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crystal City, Docket No. 2009-1560-PWS-E on March 11, 2010 assessing \$856 in administrative penalties with \$171 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas State University - San Marcos, Docket No. 2009-1568-AIR-E on March 11, 2010 assessing \$3,510 in administrative penalties with \$702 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2009-1614-AIR-E on March 11, 2010 assessing \$15,876 in administrative penalties with \$3,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gregory L. Popko, Docket No. 2009-1633-WOC-E on March 11, 2010 assessing \$376 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SEPTIC HYDRO-TEC, INC., Docket No. 2009-1659-SLG-E on March 11, 2010 assessing \$2,887 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Crawford Water Supply Corporation, Docket No. 2009-1660-PWS-E on March 11, 2010 assessing \$802 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EL PASO-LOS ANGELES LIMOUSINE EXPRESS, INC., Docket No. 2009-1665-PST-E on March 11, 2010 assessing \$3,151 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding Andres Payan dba Payan's Tourist Service, Docket No. 2009-1667-PST-E on March 11, 2010 assessing \$4,532 in administrative penalties with \$906 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linde North America, Inc., Docket No. 2009-1673-IWD-E on March 11, 2010 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanson Aggregates West LLC, Docket No. 2009-1685-EAQ-E on March 11, 2010 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Salem-Elm Ridge Water Supply Corporation, Docket No. 2009-1686-PWS-E on March 11, 2010 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Industries, Inc., Docket No. 2009-1702-AIR-E on March 11, 2010 assessing \$3,745 in administrative penalties with \$749 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding J. R. Thompson, Inc. dba Running N Ranch Industrial Complex, Docket No. 2009-1957-WR-E on March 11, 2010 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David Gillott, Docket No. 2009-1916-WOC-E on March 11, 2010 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding J&J Prairie Oaks Ranch LLC dba Prairie Oaks Ranch, Docket No. 2009-1959-WR-E on March 11, 2010 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201001452  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 24, 2010



## Notice of Comment Period and Announcement of Public Meeting on Proposed Air Quality Standard Permit for Thermoset Resin Facilities

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning the thermoset resin standard air permit proposed for issuance under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits.

### PROPOSED STANDARD PERMIT

The proposed new air quality standard permit for thermoset resin facilities would replace the current permit by rule (PBR) for thermoset resin facilities available under 30 TAC §106.392, Thermoset Resin Facilities. The PBR was last amended in 1994 and its evaluation was based on emission factors which have changed and a short-term affects screening level (used to determine off-property impacts) which has been lowered. The underestimation of styrene emissions makes it inappropriate to allow new or modified thermoset resin facilities to be authorized under the conditions of §106.392. Owners or operators currently authorized under the PBR can continue to do so until the facilities are modified. The PBR currently authorizes thermoset resin facilities with a maximum resin and gelcoat usage of 75 tons per year (tpy) for spraying operations and 150 tpy for non-spraying operations. The proposed standard permit emission limits would vary depending on the building height, stack height, and emission stream flow rate. In a separate commission action, §106.392 will be repealed and will be unavailable for new or modified thermoset resin facilities upon issuance of this standard permit.

The New Source Review Program under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, General Application, satisfy the *de minimis* criteria of §116.119, De Minimis Facilities or Sources, or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction of new facilities or modification of existing facilities that are similar in terms of operations, processes, and emissions.

A standard permit is subject to the procedural requirements of §116.603, Public Participation in Issuance of Standard Permits, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person is entitled to submit written or verbal comments regarding the proposed standard permit.

### PUBLIC MEETING

A public meeting on the proposed standard permit for thermoset resin facilities will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff will be available to discuss the standard

permit for thermoset resin facilities 30 minutes prior to the meeting and staff will also answer questions after the meeting. The public meeting will be held on May 6, 2010 at 10:00 a.m., at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin.

#### PUBLIC COMMENT AND INFORMATION

Copies of the proposed standard permit for thermoset resin facilities may be obtained from the TCEQ Web site at [http://www.tceq.state.tx.us/permitting/air/nav/nsr\\_news.html](http://www.tceq.state.tx.us/permitting/air/nav/nsr_news.html) or by contacting the Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250. Comments may be mailed to Ms. Becky Southard, Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-5698. All comments should reference the standard permit for thermoset resin facilities. Comments must be received by 5:00 p.m. on May 10, 2010. To inquire about the submittal of comments or for further information, contact Ms. Southard at (512) 239-1638. Si desea información en Español, puede llamar al (800) 687-4040.

Persons who have special communication or other accommodation needs who are planning to attend the public meeting should contact the TCEQ at (512) 239-1250. Requests should be made as far in advance as possible.

TRD-201001431  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: March 23, 2010



#### Notice of Water Quality Applications

The following notice was issued on March 12, 2010 through March 19, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

WRB REFINING LLC AND CONOCOPHILLIPS COMPANY which operate the Borger Refinery and NGL Center, which consists of a petroleum refinery and a natural gas liquids processing center, has applied for a major amendment to TPDES Permit No. WQ0001064000 to extend the temporary variance for total selenium at Outfall 001; authorize the discharge of storm water associated with industrial activity/construction activities and non-storm water effluents on an intermittent and flow variable basis via new Outfalls 017, 018, 019, 020, 021, 022, 023, 024, 025, 027, and 028; authorize the discharge of non-storm water effluents on an intermittent and flow variable basis via existing Outfalls 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015 and 016; authorize the discharge of ground water (from recovery/remediation systems) on an intermittent and flow variable basis via existing Outfalls 001, 002, 003, 004, 005, 006, and 008; and authorize the discharge of fire systems water on an intermittent and flow variable basis via all permitted outfalls. The current permit authorizes discharge of treated process wastewater, cooling tower blowdown, boiler blowdown, water treater blowdown, cooling water, water system leaks, steam condensate, reverse osmosis reject water, storm water runoff, and

sanitary wastewater at a daily average flow not to exceed 7,100,000 gallons per day via Outfall 001; storm water associated with industrial activity/construction activities and incidental discharges of industrial wastewater from the NGL Plant area on an intermittent and flow variable basis via Outfalls 002 and 003; storm water associated with industrial activity/construction activities on an intermittent and flow variable basis via Outfalls 004 and 005; and storm water associated with industrial activity/construction activities and hydrostatic test water on an intermittent and flow variable basis via Outfalls 006, 007, 008, 009, 010, 011, 012, 013, 014, 015 and 016. The draft permit authorizes the discharge treated process wastewater, cooling tower blowdown, boiler blowdown, water treater blowdown, cooling water, water system leaks, steam condensate, reverse osmosis reject water, storm water [includes process area storm water, storm water associated with industrial/construction activities, and MSGP defined non-storm water effluents], sanitary wastewater, hydrostatic test water, ground water (from recovery systems), and fire systems waters at a daily average flow not to exceed 7,100,000 gallons per day; storm water [includes process area storm water, storm water associated with industrial/construction activities, and MSGP defined non-storm water effluents], de minimus quantities of process wastewaters, boiler blowdown, fire monitor test water, utility water, cooling tower blowdown, hydrostatic test water, ground water (from recovery systems), and fire systems waters on an intermittent and flow variable basis via Outfalls 002 and 003; storm water [includes storm water associated with industrial/construction activities and MSGP defined non-storm water effluents], hydrostatic test water, ground water (from recovery systems), and fire systems waters on an intermittent and flow variable basis via Outfalls 004, 005, 006, and 008; and storm water [includes storm water associated with industrial/construction activities and MSGP defined non-storm water effluents], hydrostatic test water, and fire systems waters on an intermittent and flow variable basis via Outfalls 007, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 027, and 028. The application also includes a request for a temporary variance extension to the existing water quality standards for the water quality based criteria for selenium for Dixon Creek which is an upstream tributary of the Canadian River Below Lake Meredith in Segment No. 0101 of the Canadian River Basin. The variance extension would re-authorize a three-year period to allow additional time for the Commission to consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located adjacent to State Highway 119, approximately one mile north of the intersection of State Highway 246 and State Highway 119 near the City of Borger, Hutchinson County, Texas 79007.

UA-HOLDINGS 1994-5, L.P. has applied for a renewal of TPDES Permit No. WQ0012233001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 8550 Memorial Drive in the City of Houston in Harris County, Texas 77024.

STRUCTURAL METALS, INC. which operates a scrap metal recycling and steel products manufacturing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0001712000, which authorizes the discharge of treated process wastewater, domestic wastewater, utility wastewater, and purged groundwater at a daily average flow not to exceed 120,000 gallons per day via Outfall 001; and storm runoff on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The proposed draft permit removes storm water Outfalls 002, 003, and 004 as they are now authorized under the state-wide storm water general permit. The facility is located approximately one (1) mile west of the intersection of Interstate Highway 10 and Farm-to-Market Road 464, west of the City of Seguin, Guadalupe County, Texas 78156.

SOUTHERN CLAY PRODUCTS, INC which operates the Kennard Clay Mine, has applied for a major amendment to TPDES Permit No. WQ0001925000 to add Outfall 003 for the discharge of storm water and groundwater at a total volume not to exceed 300,000 gallons during any 24-hour period. The current permit authorizes the discharge of storm water and groundwater at a total volume not to exceed 300,000 gallons during any 24-hour period via Outfalls 001 and 002. The facility is located adjacent to the south side of U.S. Highway 90A, approximately six miles south-southeast of the City of Gonzales, Gonzales County, Texas 78629.

INEOS USA LLC which operates Green Lake Plant, has applied for a renewal of TPDES Permit No. WQ0002181000, which authorizes discharge of demineralizer regenerant, boiler blowdown, cooling tower blowdown, nonhazardous landfill storm water leachate, reverse osmosis reject water, treated domestic wastewater, supernatant from the lime sludge pits, and previously monitored effluents at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 001; discharge of previously monitored effluents (hydrotect water, compressor condensate, and storm water) and industrial activity area storm water at an intermittent and flow variable basis via Outfall 004; and discharge of storm water from rail marshaling yard and closed landfill area at an intermittent and flow variable basis via Outfall 005. The facility is located on State Highway 185 approximately five miles north of the intersection of State Highway 35 and 185 and approximately six and one-half miles south of the City of Bloomington, Calhoun County, Texas 77979.

FARCO MINING, INC which proposes to operate Trevino Mine, has applied for a renewal of TPDES Permit No. WQ0004162000, which authorizes the discharge from retention ponds in the "active mining area" on an intermittent and flow variable basis via Outfall 001, and the discharge from the retention ponds in the "post mining area" on an intermittent and flow variable basis via Outfall 101. The facility is located on the west side of Farm-to-Market Road 1472, 40 miles northwest of the City of Laredo, Webb County, Texas 78045.

STEELY LUMBER CO. INC which operates Steely Lumber Co. Facility, has applied for a renewal of TPDES Permit No. WQ0004249000, which authorizes the discharge of wet decking wastewater, utility wastewater, and storm water runoff on an intermittent and flow variable basis via Outfall 001. The facility is located at 1405 Southwood Drive, approximately 1.5 miles east of the intersection of U.S. Highway 75 and Southwood Drive, approximately 2.5 miles southeast of the City of Huntsville, Walker County, Texas 77340.

Alon USA LP which operates the Big Spring Facility, a petroleum refinery, has applied for a major amendment to TCEQ Permit No. WQ0004539000 to change the name of Refinery Lake to I-20 Lake, reduce the soil sampling frequency from quarterly to annually, update the description of the wastewater treatment system, and clarify the wastewaters authorized for disposal as treated process water, treated contaminated storm water, cooling tower and boiler blowdown, sour water stripper & desalter wastewaters, softener backwash, off-site wastewaters, uncontaminated storm water, untreated non-process cooling tower blowdown, untreated water treatment wastewaters and miscellaneous wastewaters. The current permit authorizes the disposal of process wastewater, utility wastewater (sour water stripper and desalter, cooling tower blowdown, boiler blowdown, and softener backwash), contaminated storm water, and de minimus off-site wastewater at a daily average flow not to exceed 1.224 MGD via irrigation of the 71-acre EIS and the 35-acre WIS at a maximum application rate not to exceed 17.33 acre-feet per acre irrigated per year (acre-feet/acre/year). This permit will not authorize a discharge of pollutants into water in the State. The facility is located adjacent to Interstate Highway 20 (IH 20), approximately 0.5 mile east of

the intersection of IH 20 and Farm-to-Market Road 700 (FM 700), and adjacent to the east city limit of the City of Big Spring, Howard County, Texas 79720. The 35-acre western irrigation site (WIS) is located 4,250 feet southeast of the intersection of IH 20 and FM 700 and 1,000 feet west of I-20 Lake; and the 71-acre eastern irrigation site (EIS) is located 8,500 feet southeast of the intersection of IH 20 and FM 700 and 750 feet east of I-20 Lake, Howard County, Texas 79720.

REYNOLDS METALS COMPANY which operates Sherwin Facility, an inactive alumina plant, has applied for a renewal of TPDES Permit No. WQ0004606000 which authorizes the discharge of cooling water and boiler blowdown from the Gregory Power Partners power plant, storm water and leachate from the bauxite residue beds and Lake Dressen, treated effluent from the City of Aransas Pass, and storm water from the Sherwin entrance and the San Patricio Plant area on an intermittent and flow variable basis via Outfall 001; dredge decant water, storm water (contact & noncontact) and leachate from the landfill (Bed 22) on an intermittent and flow variable basis via Outfall 002; cooling water and boiler blowdown from the Gregory Power Partners power plant, storm water and leachate from the bauxite residue beds, dredge decant water, treated effluent from the City of Aransas Pass and Sherwin Alumina, and storm water on an intermittent and flow variable basis via Outfall 003; dredge decant water and storm water (contact & non-contact) on an intermittent and flow variable basis via Outfall 005; and cooling water and boiler blowdown from the Gregory Power Partners power plant, storm water and leachate from the bauxite residue beds, dredge decant water, treated effluent from the City of Aransas Pass and Sherwin Alumina, and storm water on a intermittent and flow variable basis via Outfall 006. Outfalls 001 and 002 have been removed at the request of the permittee. The facility is located on the southeast corner of the intersection of State Highway 361 and State Highway 35, approximately one mile southeast of the City of Gregory, San Patricio County, Texas 78359.

LAGUNA MADRE WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010757001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,600,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 6 acres of restricted area of Isla Blanca County Park. The facility is located approximately 4,000 feet south of the east end of the Queen Isabella Causeway on the south end of Padre Island in Cameron County, Texas 78578. The irrigation disposal site is located in a restricted area of the Isla Blanca County Park.

CITY OF MIAMI has applied for a renewal of TPDES Permit No. WQ0011027001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located just northeast of the intersection of Houston Street and Austin Street in the City of Miami in Roberts County, Texas 79059.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 99 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014604001 to authorize a decrease in the interim II phase flow from 0.32 million gallons per day to 0.279 million gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 2,000 feet east of the centerline of Aldine Westfield Road and approximately 1,700 feet north of the intersection of Fountain Brook Park Lane and Trinity Park Lane in Montgomery County, Texas 77385.

GREENS BAYOU ASSEMBLY OF GOD CHURCH, A NON-PROFIT CORPORATION has applied for a renewal of TPDES Permit No. WQ0014608001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000

gallons per day. The facility will be located approximately 700 feet east of Beltway 8 and approximately 900 feet north of North Lake Houston Parkway in Harris County, Texas 77044.

CITY OF SCHULENBURG has applied for a major amendment to TPDES Permit No. WQ0010115002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 500 feet west of the intersection of Babylon Lane and Williams Avenue in the City of Schulenburg in Fayette County, Texas 78956.

SAN DIEGO MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010270001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 709 County Road 111, adjacent to and east of Benavides Street, approximately 800 feet south of San Diego Creek, 2,200 feet east of State Highway 359 and 3,300 feet south of State Highway 44 in Duval and Jim Wells County, Texas 78384.

CITY OF LA COSTE has applied for a renewal of TPDES Permit No. WQ0010889001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at the easterly city limits of the City of La Coste, approximately 0.5 mile east-southeast of the intersection of Farm-to-Market Road 471 and Farm-to-Market Road 2790, 0.30 mile due south of the Southern Pacific Railroad in Medina County, Texas 78039.

TOWN OF LINDSAY has applied for a renewal of TPDES Permit No. WQ0010923001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day. The facility is located at 100 Sycamore Street, approximately 600 feet east of the Farm-to-Market Road 3108 bridge over Elm Fork Trinity River, southeast of the Town of Lindsay in Cooke County, Texas 76250.

U.S. DEPARTMENT OF THE NAVY has applied for a renewal of TPDES Permit No. WQ0012035001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located west of San Fernando Creek, on the east side of the Kingsville Naval Air Station in Kleberg County, Texas 78363.

UA-HOLDINGS 1994-5 L.P. has applied for a renewal of TPDES Permit No. WQ0012233001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 8550 Memorial Drive in the City of Houston in Harris County, Texas 77024.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013462008 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 510,000 gallons per day. The facility is located approximately 0.5 mile west of the intersection of Farm-to-Market Road 732 and Joines Road on the south side of Joines Road in Cameron County, Texas 78586.

ST. PAUL WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014119001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the northwest corner of the intersection of County Road 2375 and County Road 782 approximately 2,000 feet west of State Highway 181 in San Patricio County, Texas 78387.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 391 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014327001, which autho-

rizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 4,000 feet northwest of the intersection of U.S. Highway 290 and Mueschke Road in Harris County, Texas 77433.

BATESVILLE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014394001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 184,000 gallons per day. The facility is located approximately 4,225 feet southwest of the intersection of U.S. Highway 57 and State Highway 117 in Batesville in Zavala County, Texas 78829.

LAUGHLIN-THYSSEN INC. has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014947001 to authorize the addition of language to the permit that allows sludge in the treatment ponds to be disposed of in accordance with the City of Houston sludge disposal Registration No. 730035. The existing permit authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 990,000 gallons per day. The facility is located at 928 19th Street Galena, Texas adjacent to Hunting Bayou, west of the intersection of the confluence of Hunting Bayou and the Houston Ship Channel, 1.1 miles upstream of the Federal Road crossing of Hunting Bayou in Harris County, Texas 77547.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201001451

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 24, 2010



## Request for Nominations

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for one individual to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Advisory Council) as:

An elected official from a municipality with a population of 750,000 or more (term expires August 31, 2011). This includes elected officials from Austin, Dallas, Houston and San Antonio.

The Advisory Council was created by the 68th Legislature in 1983. Members represent various interests, which include city and county solid waste agencies, public solid waste districts or authorities, commercial solid waste landfills, planning regions, environmental perspectives, city and county governments, financial advisors, registered waste tire processors, professional engineers, solid waste professionals, composting/recycling companies and general public representatives.

Upon request from the TCEQ commissioners, the Advisory Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the State of Texas.

The Advisory Council members are required by law to hold at least one meeting every three months. The meetings usually last one day and are held in Austin, Texas. Some travel reimbursement may be available.

To apply or to nominate an individual for the Advisory Council position, please complete and submit an Advisory Council application and related materials. The application and additional information is available at: <http://www.tceq.state.tx.us/goto/msw/council/>.

Evaluations will be made based upon the application, materials submitted and solid waste experience. Materials may include a resume, biography, summary of experience, list of publications, recognitions/awards, letters of reference, etc., that help demonstrate knowledge, experience and interest on municipal solid waste matters. Appointments will be made by the TCEQ's Commissioners in Austin, Texas, in the Summer 2010.

The Advisory Council application and materials must be postmarked by 5:00 p.m., Friday, April 30, 2010, and delivered to Mr. Steve Hutchinson of the Waste Permits Division. If sending by regular mail, please send to: Texas Commission on Environmental Quality, Waste Permits Division, Attention: Steve Hutchinson, P.O. Box 13087, MC 126, Austin, Texas 78711-3087. If sending by overnight mail, please send to: Texas Commission on Environmental Quality, Waste Permits Division, Attention: Steve Hutchinson, 12100 Park 35 Circle, Building A, MC 126, Austin, Texas 78753. Questions regarding the Advisory Council can be directed to Mr. Hutchinson at (512) 239-6716, or e-mail address: [shutchin@tceq.state.tx.us](mailto:shutchin@tceq.state.tx.us).

TRD-201001424

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 23, 2010



## Texas Facilities Commission

### Request for Proposals #303-0-10640-A

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-0-10640-A. TFC seeks a five (5) or ten (10) year lease of approximately 8,024 square feet of office space in Arlington, Texas.

The deadline for questions is April 9, 2010, and the deadline for proposals is April 23, 2010, at 3:00 p.m. The target award date is May 19, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or [sandy.williams@tfc.state.tx.us](mailto:sandy.williams@tfc.state.tx.us). A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=87856](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=87856).

TRD-201001444

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 24, 2010



## Department of Family and Protective Services

### Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2009, through September 30, 2014.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2010 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2010 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 30, 2010.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS web site at: <http://www.dfps.state.tx.us>. The web site includes a copy of last year's Title IV-B report. After you go to the web site, click "About DFPS," "Reports, Plans, Statistics, and Presentations," and then "Title IV-B State Plan."

Written comments regarding the annual update may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Max Villarreal; P.O. Box 149030, MC Y-934; Austin, Texas 78714-9030; telephone (512) 919-7868; fax (512) 339-5927. The comments must be received no later than May 1, 2010.

TRD-201001419

Gerry Williams

General Counsel

Department of Family and Protective Services

Filed: March 23, 2010



## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a waiver amendment for the State of Texas Access Reform (STAR) Program, which is a Managed Care waiver program under the authority of §1915(b) of the Social Security Act. The STAR Program is currently approved for the two-year period beginning July 1, 2010, and ending June 30, 2012.

The principle objectives of STAR are early intervention and improved access to quality care, resulting in improved health outcomes for Medicaid recipients who receive cash assistance (Temporary Assistance for Needy Families (TANF)), pregnant women and recipients with limited income with a special focus on prenatal and well-child care. Clients enrolled in STAR receive all of the traditional Medicaid benefits plus the added STAR benefits that include unlimited prescriptions for adults, no limit on necessary hospital days, and health education classes. The STAR program exists in Bexar, Dallas, El Paso, Harris, Harris Expansion, Lubbock, Nueces, Tarrant and Travis Service Areas. These 9 service areas consist of 52 counties.

Texas is adding a comprehensive outpatient substance use disorder treatment benefit for adults, and clarifying existing services for children, in Medicaid who have a substance use disorder. Individuals residing in the Dallas Service Area will receive substance use disorder treatment benefits through the NorthSTAR Program. The anticipated effective date for the substance use disorder benefit is September 2010. The new benefit for the proposed comprehensive outpatient Medicaid substance use disorder treatment services include:

- Assessment,
- Outpatient detoxification,
- Outpatient substance abuse and chemical dependency counseling, and

These services must be provided by:

- Licensed hospitals; or
- Facilities that are licensed and regulated by the Department of State Health Services to provide substance abuse and dependency treatment services, including detoxification.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2010, and ending June 30, 2012. This

waiver amendment is expected to result in cost savings for the state for each year in the two-year period covering 2010 through 2012.

To obtain copies of the proposed waiver application, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1953, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-201001387

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: March 18, 2010

◆ ◆ ◆  
**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Nacogdoches	Nacogdoches Heart and Vascular Institute P.A.	L06302	Nacogdoches	00	03/10/10
Throughout TX	Applied Technical Services Inc.	L06282	Kemah	00	02/24/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	ARMC L.P. dba Abilene Regional Medical Center	L02434	Abilene	81	03/10/10
Addison	Rockwall Regional Hospital L.L.C. dba Texas Health Presbyterian Hospital - Rockwall	L06103	Addison	03	02/26/10
Amarillo	Cardiology Center of Amarillo L.L.P.	L05736	Amarillo	11	02/26/10
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba North Austin Medical Center	L04910	Austin	87	03/11/10
Benbrook	Weatherford International Inc.	L00747	Benbrook	86	03/08/10
Carrollton	Trinity M.C. L.L.C. dba Baylor Medical Center at Carrollton	L03765	Carrollton	61	03/03/10
Channelview	Lyondell Chemical Company	L04439	Channelview	24	03/08/10
Dallas	Cardinal Health	L05610	Dallas	16	03/09/10
Dallas	Louisiana Texas Healthcare Management L.L.C. dba South Hampton Community Hospital	L06259	Dallas	01	03/01/10
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	74	02/26/10
Dallas	Prime Imaging Partners L.L.C. dba Prime Diagnostic Imaging L.L.C.	L06309	Dallas	01	03/03/10
Dallas	Texas Health Presbyterian Hospital - Dallas	L01586	Dallas	96	02/26/10
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	16	02/26/10
Denton	Columbia Medical Center of Denton Subsidiary L.P. dba Denton Regional Medical Center	L02764	Denton	66	03/12/10
Denton	Paramount Cardiovascular Associates P.A.	L05596	Denton	07	03/10/10
El Paso	Desert Imaging L.P.	L05626	El Paso	11	03/11/10
El Paso	East El Paso Physicians Medical Center L.L.C.	L05676	El Paso	18	03/01/10
El Paso	El Paso County Hospital District dba University Medical Center of El Paso	L00502	El Paso	63	03/09/10
El Paso	Southwest X-Ray L.P.	L05207	El Paso	09	03/16/10
El Paso	The University of Texas at El Paso	L00159	El Paso	62	03/01/10
Fort Worth	Physician Reliance L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	33	02/26/10
Fort Worth	Physician Reliance L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	34	03/10/10
Fort Worth	Texas Health Harris Methodist Hospital at Fort Worth	L01837	Fort Worth	125	02/26/10
Galveston	The University of Texas Medical Branch	L01299	Galveston	86	03/01/10

## AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

Greenville	Hunt Memorial Hospital District dba Hunt Regional Medical Center	L01695	Greenville	38	03/12/10
Houston	Columbia/HCA Healthcare Corporation dba Spring Branch Medical Center	L02473	Houston	74	03/03/10
Houston	Columbia/HCA Healthcare Corporation dba Spring Branch Medical Center	L02473	Houston	75	03/12/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	150	03/09/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	151	03/15/10
Houston	Nuclear Imaging Services L.P.	L05791	Houston	10	02/25/10
Houston	One Step Diagnostic Inc.	L05990	Houston	04	02/24/10
Houston	University General Hospital L.P.	L06018	Houston	04	03/12/10
Irving	Las Colinas Oncology MSO L.P. dba Las Colinas Cancer Center	L06078	Irving	06	03/15/10
Longview	Good Shepherd Medical Center	L02411	Longview	84	03/09/10
McAllen	Valley Nuclear Incorporated	L04521	McAllen	29	02/19/10
McKinney	Cancer Center Associates	L05952	McKinney	06	03/08/10
Mesquite	Lone Star HMA, L.P. dba Dallas Regional Medical Center	L02428	Mesquite	49	03/05/10
Nacogdoches	TH Healthcare Ltd. A Limited Texas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	44	03/09/10
New Braunfels	Cancer Care Network of South Texas P.A.	L05717	New Braunfels	15	02/26/10
New Braunfels	Cemex Inc.	L02809	New Braunfels	30	03/05/10
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	92	03/08/10
Plano	Medical Edge Healthcare Group P.A. dba Heart First	L05555	Plano	28	02/26/10
Plano	Physician Reliance Network Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	17	03/05/10
Richardson	Medical Edge Healthcare Group P.A. dba PET/CT Center of Richardson	L05688	Richardson	15	03/10/10
Richmond	Oakbend Medical Center	L02406	Richmond	55	03/04/10
San Antonio	Cardinal Health	L02033	San Antonio	103	03/04/10
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	117	03/08/10
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	14	03/04/10
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	183	03/10/10
Spring	Southwestern Imaging Systems and Services L.P.	L06241	Spring	01	03/04/10
Stafford	Aloki Enterprise Inc.	L06257	Stafford	03	03/03/10
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	20	02/23/10
Texas City	CHCA Mainland L.P. dba Mainland Medical Center	L02577	Texas City	38	02/23/10
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	105	02/24/10
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	106	03/02/10
Throughout TX	Eagle N.D.T., L.L.C.	L06176	Abilene	17	02/25/10
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	216	02/26/10
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	217	03/10/10
Throughout TX	Kleinfelder Central Inc.	L01351	Austin	69	03/11/10
Throughout TX	Spectro Analytical Instruments Inc.	L02788	Austin	52	03/08/10
Throughout TX	CME Testing and Engineering Inc.	L05263	College Station	11	03/10/10
Throughout TX	N-Spec Quality Services Inc.	L05113	Corpus Christi	40	03/03/10
Throughout TX	Geotel Engineering Inc.	L05674	Dallas	07	03/03/10
Throughout TX	H & H X-Ray Services Inc.	L02516	Flint	83	03/04/10
Throughout TX	Waggoner & Associates Inc. dba Waggoner-Texas & Associates Inc.	L06159	Flint	12	03/04/10



AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

Throughout TX	Rio Grande Resource Corporation	L06151	Hobson	03	02/25/10
Throughout TX	D-Arrow Inspection Inc.	L03816	Houston	83	03/04/10
Throughout TX	Material Inspection Technology Inc.	L05672	Houston	35	03/08/10
Throughout TX	Varco L.P. (formerly known as Tuboscope Vetco International Inc.)	L00287	Houston	128	03/09/10
Throughout TX	Goolsby Testing Laboratories Inc.	L03115	Humble	98	03/09/10
Throughout TX	Oceaneering International Inc.	L04463	Ingleside	73	03/04/10
Throughout TX	Hi-Tech Testing Services Inc.	L05021	Longview	85	03/03/10
Throughout TX	City of Lubbock	L01735	Lubbock	35	03/08/10
Throughout TX	High Plains Underground Water Conservation District No. 1	L02598	Lubbock	22	03/01/10
Throughout TX	Petrochem Inspection Services Inc.	L04460	Pasadena	102	03/10/10
Throughout TX	Texas Gamma Ray L.L.C.	L05561	Pasadena	92	03/11/10
Throughout TX	Turner Industries Group L.L.C.	L06235	Pasadena	05	03/08/10
Throughout TX	Blazer Inspection Inc.	L04619	Texas City	60	03/03/10
Tomball	Tomball Hospital Authority dba Tomball Regional Hospital	L02514	Tomball	50	02/22/10
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	152	02/22/10
Victoria	Citizens Medical Center	L00283	Victoria	83	02/24/10
Waco	Hillcrest Baptist Medical Center	L00845	Waco	90	02/24/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	Marathon Pipe Line L.L.C.	L05303	Pasadena	10	03/08/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Texas Hematology/Oncology Center P.A. dba Patients Comprehensive Cancer Center	L05397	Dallas	19	03/10/10
The Woodlands	VGX Pharmaceuticals	L05773	The Woodlands	07	02/26/10
Throughout TX	Freese and Nichols Inc.	L04301	Fort Worth	19	03/10/10

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201001382

Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: March 17, 2010



## Public Hearings for 2012 - 2013 Genetic Services Resource Allocation Plan

In accordance with Human Resources Code, §134.001, the Interagency Council on Genetic Services (council) is charged with developing a resource allocation plan recommending how funds for genetic services should be spent during the next fiscal biennium. The council will hold public hearings to gather information necessary to prepare the plan as follows:

Monday, April 12, 2010, from 1:00 p.m. to 3:00 p.m., at the Department of State Health Services, Moreton Building, Room 652, 1100 West 49th Street Austin, Texas.

Wednesday, May 12, 2010, from 1:00 p.m. to 3:00 p.m., at the Department of State Health Services, Moreton Building, Room 652, 1100 West 49th Street Austin, Texas.

Public comments received by the Interagency Council for Genetic Services will be considered in the preparation and development of the FY2012 - 2013 Resource Allocation Plan.

Additional information may be obtained by contacting Sharon Newcomb-Kase, Newborn Screening Unit, Genetics, Department of State Health Services, 1-800-252-8023, extension 3237, or by email at sharon.newcomb-kase@dshs.state.tx.us.

TRD-201001425  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: March 23, 2010



## Texas Department of Housing and Community Affairs

### Housing Trust Fund Program

2010-2011 HTF Affordable Housing Match Program Notice of Funding Availability (NOFA)

#### I. Source of Housing Trust Funds.

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

#### II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$750,000 in funding from the 2010-2011 Housing Trust Fund (HTF) appropriation to provide funds required to meet cash match requirements or scoring criteria incentives of state (non-Department), federal (non-Department), or private affordable housing grants or loans which will result in the production or provision of housing for households with incomes that do not exceed 80% of the Area Median Family Income (AMFI).

Funds under this NOFA will be awarded through an Open Application Cycle. The Application Acceptance Period will open on March 29,

2010, and Applications will be accepted by the Department on an on-going basis until 5:00 p.m., Central Time, on Friday, December 31, 2010, regardless of method of delivery.

#### III. Applicant Eligibility.

Applicants responding to this NOFA must meet the qualifications of the NOFA and must be Texas-based Nonprofit Organizations, Community Development Financial Institutions, Rural municipalities, or Rural Counties.

#### IV. Proposed Contract Period.

The Contract Period shall and requirements shall be based upon the timeline of the proposed activity and may reflect requirements of the Primary Funding Source.

#### V. Maximum Award Per Applicant and Application.

The maximum award amount per Application may not exceed \$125,000. The maximum cumulative award per Applicant is \$250,000.

#### VI. Application Deadline and Availability.

The HTF Affordable Housing Match Program NOFA will be posted on the Department's website: <http://www.tdhca.state.tx.us/htf/index.htm> and organizations on the Department's list serve will receive an e-mail notification that the NOFA is available on the Department's web-site.

**Deadline for Receipt: Friday, December 31, 2010, by 5:00 p.m. CST**

#### Mailing Address:

Mr. Mark Leonard, Housing Trust Fund Program Specialist

Housing Trust Fund Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

#### Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

**Hand Delivery:** If you are hand delivering the application, contact Mark Leonard at (512) 936-7799 ([mark.leonard@tdhca.state.tx.us](mailto:mark.leonard@tdhca.state.tx.us)) or Dee Copeland Patience at (512) 475-2567 ([dee.copeland@tdhca.state.tx.us](mailto:dee.copeland@tdhca.state.tx.us)) when you arrive at the lobby of our building for application acceptance.

**Questions.** Questions pertaining to the content of the HTF Affordable Housing Match Program NOFA may only be directed to Mark Leonard at (512) 936-7799 ([mark.leonard@tdhca.state.tx.us](mailto:mark.leonard@tdhca.state.tx.us)) or Dee Copeland Patience at (512) 475-2567 ([dee.copeland@tdhca.state.tx.us](mailto:dee.copeland@tdhca.state.tx.us)).

TRD-201001449

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 24, 2010



Request for Proposals for Inspection Services for Single Family Structures

**SUMMARY.** The Texas Department of Housing and Community Affairs (TDHCA) announces a Request for Proposals (RFP) for Inspection Services for Single Family Structures.

**DEADLINE FOR SUBMISSION.** The deadline for submission in response to the RFP is 4:00 p.m., Central Daylight Saving Time, Friday, April 9, 2010. No proposal received after the deadline will be considered. No incomplete, unsigned, or late proposals will be accepted after the proposal deadline, unless TDHCA determines, in its sole discretion that it is in the best interest of TDHCA to do so.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this RFP in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Individuals or firms interested in submitting a proposal should visit our website at <http://www.tdhca.state.tx.us/pmcomp>, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to TDHCA in writing to Julie Dumbeck ([julie.dumbeck@tdhca.state.tx.us](mailto:julie.dumbeck@tdhca.state.tx.us)).

**PLACE AND METHOD OF PROPOSAL DELIVERY.** Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Mailing Address:

P.O. Box 13941

Austin, TX 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3800

TRD-201001448

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 24, 2010

## Houston-Galveston Area Council

### Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits proposals from qualified organizations to provide layoff aversion service that will help keep existing employers and jobs in the region.

A proposal package will be available for download at [www.h-gac.com](http://www.h-gac.com) or [www.wrksolutions.com](http://www.wrksolutions.com). Prospective bidders may contact Carol Kimmick at (713) 627-3200 or [carol.kimmick@h-gac.com](mailto:carol.kimmick@h-gac.com) or visit the web site to request a proposal package.

H-GAC will not hold a bidders' conference for this Request for Proposals. Potential bidders may e-mail questions to H-GAC at [carol.kimmick@h-gac.com](mailto:carol.kimmick@h-gac.com) until 6:00 p.m. Central Standard Time on Friday, March 26, 2010. We will post answers to those questions online after Tuesday, March 30, 2010. Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on Monday, April 5, 2010.

Mailed proposals must be postmarked no later than Thursday, April 1, 2010. H-GAC will not accept late proposals; we will make no exceptions.

TRD-201001422

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: March 23, 2010

## Texas Department of Insurance

### Company Licensing

Application to change the name of PMA CAPITAL INSURANCE COMPANY to EXCALIBUR REINSURANCE CORPORATION, a foreign fire and casualty company. The home office is in Philadelphia, Pennsylvania.

Application to change the name of TIG INDEMNITY COMPANY to TORUS NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in San Diego, California.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201001421

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: March 23, 2010

## Texas Lottery Commission

### Instant Game Number 1239 "Double Your Luck"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1239 is "DOUBLE YOUR LUCK". The play style is "key number match with doubler".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1239 shall be \$2.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1239.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, DOLLAR BILL SYMBOL, MONEYBAG SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1239 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
DOLLAR BILL SYMBOL	\$BILL
MONEY BAG SYMBOL	DBLR
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7)

digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1239), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1239-0000001-001.

K. Pack - A pack of "DOUBLE YOUR LUCK" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOUBLE YOUR LUCK" Instant Game No. 1239 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DOUBLE YOUR LUCK" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "dollar bill" play symbol, the player wins PRIZE shown for that symbol instantly. If a player reveals a "money bag" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "MONEYBAG" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "DOLLAR BILL" (auto win) play symbol will never appear more than once on a ticket.

D. No more than two (2) matching non-winning prize symbols will appear on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE YOUR LUCK" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and

instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOUBLE YOUR LUCK" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLE YOUR LUCK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DOUBLE YOUR LUCK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DOUBLE YOUR LUCK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1239. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1239 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	566,400	12.50
\$4	651,360	10.87
\$5	84,960	83.33
\$10	99,120	71.43
\$20	42,480	166.67
\$50	47,141	150.19
\$100	6,549	1,081.08
\$1,000	47	150,638.30
\$20,000	7	1,011,428.57

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1239 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1239, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201001426  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 23, 2010



Instant Game Number 1246 "Gold Fever"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1246 is "GOLD FEVER". The play style is "key number match with multiplier and win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1246 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1246.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, NUGGET SYMBOL, GOLD BAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$2,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1246 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
10	TEN
11	ELEVN
12	TWLV
13	THRTN
14	FORTN
15	FIFTN
16	SIXTN
17	SVNTN
18	EGHTN
19	NINTN
20	TWENT
21	TWYONE
22	TWYTWO
23	TWYTHR
24	TWYFOR
25	TWYFIV
26	TWYSIX
27	TWYSVN
28	TWYEGT
29	TWYNIN
30	THIRTY
31	THYONE
32	THYTWO
33	THYTHR
34	THYFOR
35	THYFIV
36	THYSIX
37	THYSVN
38	THYEGT
39	THYNIN
40	FORTY
COIN SYMBOL	COIN
NUGGET SYMBOL	WINX10
GOLD BAR SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN



<b>\$20.00</b>	<b>TWENTY</b>
<b>\$50.00</b>	<b>FIFTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$200</b>	<b>TWO HUND</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$50,000</b>	<b>50 THOU</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1246), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1246-0000001-001.

K Pack - A pack of "GOLD FEVER" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLD FEVER" Instant Game No. 1246 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GOLD FEVER" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "coin" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "nugget" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. If a player reveals a "gold bar" play symbol, the player WINS ALL 20 PRIZES SHOWN! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No five or more matching non-winning prize symbols on a ticket.

C. The "NUGGET" (win x 10), and "GOLD BAR" (win all) play symbols will only appear on intended winning tickets as dictated by the prize structure.

D. The "COIN" (auto win) play symbol will never appear more than once on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. When the "GOLD BAR" (win all) play symbol appears, there will be no occurrence of any WINNING NUMBERS play symbols matching to any YOUR NUMBER play symbols.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. The top prize will appear on every ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "GOLD FEVER" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$150 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$150 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLD FEVER" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLD FEVER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GOLD FEVER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GOLD FEVER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the

back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1246. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 1246 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$5</b>	<b>480,000</b>	<b>12.50</b>
<b>\$10</b>	<b>680,000</b>	<b>8.82</b>
<b>\$15</b>	<b>80,000</b>	<b>75.00</b>
<b>\$20</b>	<b>100,000</b>	<b>60.00</b>
<b>\$25</b>	<b>80,000</b>	<b>75.00</b>
<b>\$50</b>	<b>80,000</b>	<b>75.00</b>
<b>\$100</b>	<b>4,000</b>	<b>1,500.00</b>
<b>\$150</b>	<b>2,250</b>	<b>2,666.67</b>
<b>\$200</b>	<b>800</b>	<b>7,500.00</b>
<b>\$2,000</b>	<b>400</b>	<b>15,000.00</b>
<b>\$50,000</b>	<b>6</b>	<b>1,000,000.00</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1246 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1246, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201001427

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 23, 2010



**Instant Game Number 1249 "\$1,000 Spin"**

1.0 Name and Style of Game.

A. The name of Instant Game No. 1249 is "\$1,000 SPIN". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1249 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1249.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5,

6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1249 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1249), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1249-0000001-001.

K. Pack - A pack of "\$1,000 SPIN" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$1,000 SPIN" Instant Game No. 1249 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$1,000 SPIN" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WHEEL NUMBER play symbol, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate WHEEL NUMBERS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000 SPIN" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identi-

fication, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000 SPIN" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000 SPIN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1,000 SPIN" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$1,000 SPIN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1249. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1249 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	652,800	12.50
\$2	734,400	11.11
\$4	204,000	40.00
\$5	54,400	150.00
\$10	54,400	150.00
\$20	23,800	342.86
\$40	13,260	615.38
\$100	680	12,000.00
\$1,000	68	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1249 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1249, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201001428

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 23, 2010



Instant Game Number 1251 "Triple Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1251 is "TRIPLE CASH". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1251 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1251.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, TRIPLE SYMBOL, \$3.00, \$6.00, \$8.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$100, \$300, \$1,000, \$3,000, and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1251 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
TRIPLE SYMBOL	TRIPLE
\$3.00	THREE\$
\$6.00	SIX\$
\$8.00	EIGHT\$
\$9.00	NINE\$
\$10.00	TEN\$



\$15.00	FIFTN
\$18.00	EGHTN
\$24.00	TWY FOR
\$30.00	THIRTY
\$60.00	SIXTY
\$90.00	NINTY
\$100	ONE HUND
\$300	THR HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00 or \$24.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$90 and \$300.

H. High-Tier Prize - A prize of \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1251), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1251-0000001-001.

K. Pack - A pack of "TRIPLE CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE CASH" Instant Game No. 1251 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLE CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 32 (thirty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If the player reveals a "TRIPLE" play

symbol, the player wins TRIPLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 32 (thirty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 32 (thirty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 32 (thirty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "TRIPLE" (tripler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 3 and \$3).

H. The top prize will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE CASH" Instant Game prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00, \$90.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be

denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE CASH" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TRIPLE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TRIPLE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1251. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 1251 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$3</b>	<b>322,560</b>	<b>15.63</b>
<b>\$6</b>	<b>443,520</b>	<b>11.36</b>
<b>\$9</b>	<b>90,720</b>	<b>55.56</b>
<b>\$15</b>	<b>30,240</b>	<b>166.67</b>
<b>\$18</b>	<b>50,400</b>	<b>100.00</b>
<b>\$24</b>	<b>40,320</b>	<b>125.00</b>
<b>\$30</b>	<b>40,320</b>	<b>125.00</b>
<b>\$60</b>	<b>15,288</b>	<b>329.67</b>
<b>\$90</b>	<b>5,460</b>	<b>923.08</b>
<b>\$300</b>	<b>1,176</b>	<b>4,285.71</b>
<b>\$3,000</b>	<b>18</b>	<b>280,000.00</b>
<b>\$30,000</b>	<b>6</b>	<b>840,000.00</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1251 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1251, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201001430  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 23, 2010

### **Public Utility Commission of Texas**

Project No. 35792 - Workshop on Rulemaking Relating to the Goal for Renewable Energy

Public Utility Commission of Texas

9:00 a.m. - 1:00 p.m., Wednesday, March 31, 2010

Commissioners' Hearing Room

7th Floor, Travis Building

1701 N. Congress Avenue

Austin, TX 78701

#### AGENDA

I. REC Tiers and Tier Structure

II. Compliance with REC requirements

III. Implementation Issues

IV. Additional Q&A

TRD-201001417

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 22, 2010



#### Public Notice of Workshop on the Rulemaking for Utility Infrastructure Storm Hardening

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the Rulemaking for Utility Infrastructure Storm Hardening on Wednesday, April 7, 2010, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 37475 has been established for this proceeding. Please refer to the draft straw man and comments filed under Project Number 37475. The commission would like to further discuss comments posted in this project.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 no later than Monday, April 12, 2010. All responses should reference Project Number 37475.

Questions concerning the workshop or this notice should be referred to Regina Chapline, Infrastructure Policy Analyst, Infrastructure and Reliability Division at (512) 936-7392. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201001436

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 23, 2010



#### Texas Department of Savings and Mortgage Lending

##### Notice of Application of Change of Control of a State Savings Bank

Notice is hereby given that on March 16, 2010, an application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of Orange Savings Bank, ssb, Orange, Texas, by Ross H. Smith Jr. and Eva J. Smith.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the rules and regulations applicable to Texas savings banks. These rules are on file with the Office of the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-201001390

Douglas B. Foster

Commissioner

Texas Department of Savings and Mortgage Lending

Filed: March 19, 2010



#### Texas Water Development Board

##### Notice of Opportunity to Comment on Water Planning Area Boundaries

Texas Water Code §16.053(b) directs the Texas Water Development Board (TWDB) to designate the areas for which regional water plans shall be developed, taking into consideration such factors as river basin and aquifer delineations, water utility development patterns, socioeconomic characteristics, existing regional water planning areas, political subdivision boundaries, public comment, and other factors the Board deems relevant. As a result, 16 regional water planning areas were designated in the state in 1998. The Board is currently in the process of reviewing the designations to determine whether any updates are necessary. Members of the public are encouraged to provide relevant and material comments concerning the existing regional water planning area boundaries, which may be viewed at <http://www.twdb.state.tx.us/wrpi/rwp/map.htm>.

Any person may submit written comments on or before Tuesday, June 1, 2010 by mail to Temple McKinnon at Water Resource Planning and Information, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us). Comments must be received by 5:00 p.m. on June 1.

If you need assistance obtaining maps of the boundaries, please call (512) 475-2057 for arrangements to view them. After the close of the comment period, the Board may consider proposing boundary revisions but will not do so prior to the regular Board meeting currently scheduled for Thursday, August 19, 2010.

TRD-201001446

Ingrid K. Hansen

Deputy General Counsel

Texas Water Development Board

Filed: March 24, 2010



##### Requests for Statements of Qualification for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for groundwater related studies for the northern portion of the Gulf Coast Aquifer, annual groundwater recharge and evapotranspiration estimates in Groundwater Management Area 8, development of three dimensional aquifer visualization tools representing Texas aquifers, and compiling and scanning aquifer pumping tests from the Texas Commission of Environmental Quality's Public Water Supply Program for tests completed in wells located in Groundwater Management Area 8. Guidelines for Statements of Qualifications, which include an

application form and more detailed research topic information, will be supplied by the TWDB upon request.

### **Description of Research Objectives**

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The initial purpose of the Groundwater Availability Modeling Program was to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Since the passage of House Bill 1763 (79th Legislative Session) our focus has evolved to assist Groundwater Management Areas with the interpretation of desired future conditions of their groundwater resources into managed available groundwater estimates for planning and permitting purposes. Numerical groundwater flow models of the aquifers in Texas may be used to assist with these assessments.

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications for (1) re-visiting and updating the framework for the northern portion of the Gulf Coast Aquifers from the Brazos River to Louisiana, (2) using remote satellite information and analysis to better quantify groundwater recharge and evapotranspiration in Groundwater Management Area 8, (3) developing three dimensional visual tools representing the various components of flow to, within, and from aquifers, and (4) compiling and scanning aquifer pumping tests for aquifers located in Groundwater Management Area 8 from hard copy data associated with the Texas Commission of Environmental Quality's Public Water Supply Program so we can better understand and constrain aquifer properties for the development and improvement to numerical groundwater flow models. Separate Statement of Qualifications for each of the four research projects is expected.

Details on the research projects and project requirements are available from the TWDB website. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material [http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals\\_index.asp](http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp).

### **Research Objectives for the Gulf Coast Aquifer hydrogeologic framework project**

For the northern portion of the Gulf Coast Aquifer System, TWDB expects hydrogeologic framework to be developed for improvements to the existing groundwater availability model in a manner similar to the approach used for the Lower Colorado River Authority-San Antonio Water System (LCRA-SAWS) Water Project ([http://www.twdb.state.tx.us/publications/reports/GroundWaterReports/GWReports/R365/ch06-Young\\_K&geology%20v2.pdf](http://www.twdb.state.tx.us/publications/reports/GroundWaterReports/GWReports/R365/ch06-Young_K&geology%20v2.pdf)) and the current project under final review for the portion of the Gulf Coast Aquifer System between the Brazos River extending to the Rio Grande: [http://www.twdb.state.tx.us/gam/glfc\\_c/glfc\\_c.htm](http://www.twdb.state.tx.us/gam/glfc_c/glfc_c.htm). The hydrogeologic framework for the Gulf Coast Aquifer System should delineate the Beaumont, Lissie, Willis, Upper Goliad, and Lower Goliad formations, as well as the Oakville Formation and the Catahoula Sands in the outcrop from the Brazos River extending into Louisiana. In addition, the base of the Gulf Coast Aquifer System should be constrained by the previously developed surface for the top of the Yegua-Jackson Aquifer (<http://www.twdb.state.tx.us/gam/ygjk/ygjk.htm>) and should also align with and match the framework for the Gulf Coast Aquifer System from the Brazos River to the Rio Grande. The approach used for the above mentioned studies relied on well-defined stratigraphic boundary markers, aquifer depositional environments, and a detailed, systematic, interpretive process based on depositional facies to identify depositional cycles that connected boundary markers using a carefully

defined set of depositional facies. The objective of this research project is to provide top and bottom surfaces of each hydrogeologic unit, sand/shale percentages for each unit and their spatial distribution through net sand maps, and fraction of fresh water across the study area for each hydrogeologic unit using appropriate geophysical logs. All information gathered during the contract should be delivered in digital and Environmental Systems Research Institute (ESRI) ArcGISTM geographic information system compatible format. All background information, including geophysical logs used, should also be scanned and delivered in a geodatabase.

Monthly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

Draft and final deliverables shall include:

- \* maps of the interpreted top and bottom surfaces of each hydrologic unit with locations of data used for the interpretation;
- \* a groundwater availability modeling compatible, ESRI based ArcGISTM geodatabase that includes source data by location, final interpreted structure surfaces, net sand, if possible and applicable, reliability factors of source data, and sufficient metadata to duplicate work; and
- \* a report documenting the above (hard copy and electronic versions in both Microsoft Word 2003 format and in Adobe Acrobat 8.0 PDF compatible format).

The following issues need to be addressed in each Statement of Qualifications:

- \* the hydrostratigraphy of the study area;
- \* approach to delineating structure, including possible resources that encompasses contacting local groundwater conservation districts and subsidence districts as well as proposed methodologies;
- \* approach to determine net sand thicknesses, if possible and applicable; and
- \* how the information will be organized and interpreted in a geographic information system.

In addition, we expect potential contractors to indicate their abilities in:

- \* general hydrogeology;
- \* hydrogeology of the modeled aquifer;
- \* geographical information systems;
- \* technology transfer;
- \* producing high-quality reports; and
- \* meeting deadlines.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. A formal talk discussing the results shall be presented to TWDB staff at the end of the project. The Statements of Qualifications shall not be more than 15 pages in length, excluding qualifications and experience of project staff and Historically Underutilized Business (HUB) plan.

### **Research Objectives for the groundwater recharge and evapotranspiration estimates for Groundwater Management Area 8**

For Groundwater Management Area 8  
([http://www.twdb.state.tx.us/mapping/maps/pdf/gma/GMA\\_8.pdf](http://www.twdb.state.tx.us/mapping/maps/pdf/gma/GMA_8.pdf)),

TWDB expects annual spatial estimates of groundwater recharge and evapotranspiration to be used for groundwater modeling efforts of all the major and minor aquifers within the study area. The objective of this proposed research project is to develop annual estimates of groundwater recharge and evapotranspiration in Groundwater Management Area 8 using remote satellite information, provided as a deliverable to TWDB in digital and Environmental Systems Research Institute (ESRI) ArcGISTM geographic information system compatible format. The groundwater recharge and evapotranspiration estimates should be delineated onto a groundwater modeling grid specified by TWDB staff.

Monthly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

Draft and final deliverables shall include:

- \* maps of estimated groundwater recharge and evapotranspiration;
- \* rectified and georeferenced satellite imagery used to estimate the annual recharge and evapotranspiration in Groundwater Management Area 8, provided to TWDB on one or more external hard drive(s);
- \* an ESRI based ArcGISTM 9.3 geodatabase that includes annual estimates of recharge and evapotranspiration delineated onto a modeling grid for Groundwater Management Area 8, as specified by TWDB;
- \* Metadata following the Federal Geographic Data Committee - Content Standard for Digital Geospatial Metadata (FGDC CSDGM) standards in ESRI-defined Extensible Markup Language (XML) format;
- \* if possible and applicable, validity factors or a range of error for both the estimated recharge and evapotranspiration; and
- \* a report documenting the above (hard copy and electronic versions in both Microsoft Word 2003 format and in Adobe Acrobat 8.0 PDF compatible format).

The following issues need to be addressed in the Statement of Qualifications for:

- \* the spectral, spatial, and temporal characteristics of the remotely sensed data to be used in this project;
- \* approach to ground-based investigations and field characterization used for calibrating the remote sensing classification system and validating data interpretations;
- \* approach to satellite image processing and geospatial analysis; and
- \* approach to quantifying annual estimates of both recharge and evapotranspiration from remote sensing information including the years that annual estimates will be provided.

In addition, we expect potential contractors to indicate their abilities in:

- \* remote sensing data acquisition;
- \* ground-based investigations and characterization for system calibration and validation;
- \* remote sensing image processing and geospatial analysis;
- \* technology transfer;
- \* producing high-quality reports; and
- \* meeting deadlines.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. A for-

mal talk discussing the results shall be presented to TWDB staff at the end of the project. The Statements of Qualifications shall not be more than 15 pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff and HUB plan.

### **Research Objectives for the development of three dimensional aquifer visualization tools representing Texas aquifers**

The objective of this project is to create three-dimensional (3D) visualization tools representing at minimum a confined and unconfined dipping aquifer that details the various components of flow into, within, and out of an aquifer to allow the general public to have a better understanding of the framework of an aquifer flow system and the effects of pumping and/or drought on water levels. The outcome of the project, accessible to anyone through the TWDB website, is meant to educate and further participation of stakeholders in the management of their groundwater resources.

Monthly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

Draft and final deliverables shall include:

- \* Aquifer fly through animation for the web (Adobe Flash or Microsoft Silverlight) and on CD/DVD media (MP4, M4V, or MKV files using a high quality h264 or x264 codec).
- \* Time series animation of water level fluctuations through time for the web (Adobe Flash or Microsoft Silverlight) and on CD/DVD media (MP4 or MKV files using a high quality h264 or x264 codec).
- \* An instructions manual (Adobe PDF format) detailing the steps and software needed to recreate the animations.
- \* A report on the project detailing approach, methods, issues, and recommendations for the future (hard copy and electronic versions in both Microsoft Word 2003 format and in Adobe Acrobat 8.0 PDF compatible format).

The following issues need to be addressed in the Statement of Qualifications:

- \* Approach to processing large amounts of X,Y,Z data for inclusion in a design/animation software package.
- \* Approach to inclusion of shapefiles (administrative boundaries, hydrological features, wells, etc.) for spatial referencing of the three-dimensional model.
- \* Previous animations and/or interactive three dimensional visualizations of natural phenomena or models of the natural world, delivered over the web.

In addition, we expect potential contractors to indicate their abilities in:

- \* technology transfer;
- \* producing high-quality reports and graphics; and
- \* meeting deadlines.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. A formal talk discussing the results shall be presented to TWDB staff at the end of the project. The Statement of Qualifications shall not be more than 15 pages in length, excluding qualifications and experience of project staff and HUB plan. Applicants should be familiar with standards and requirements for the groundwater availability models associated with the Groundwater Availability Modeling Program.

## Research Objectives aquifer tests in Groundwater Management Area 8

The Texas Commission of Environmental Quality Public Water Supply Program requires a 36 hour pumping test to be conducted on every public water supply groundwater well in Texas. While the pumping test is required to determine if the well can produce the volume of water required for the design of the water supply entity, the data can be re-analyzed to estimate aquifer properties. For this project we are concentrating the effort on aquifer pumping tests conducted in aquifers located in Groundwater Management Area 8 (approximately 1,065 files). Once the hard copy files of the aquifer tests are scanned in electronically and converted into a database, the data can then be interpreted by TWDB staff using an analytical model, such as the Theis solution or Cooper-Jacob equation, where the measured water elevations are plotted and compared against plots of theoretically derived data. The purpose of this project is to better understand and constrain aquifer properties for the development and improvement to numerical groundwater flow models for the major and minor aquifers located in Groundwater Management Area 8.

Monthly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

Deliverables shall include:

- \* An ESRI based ArcGISTM 9.3 geodatabase that relates well completion information (including state well identification, if populated), screening data, aquifer information, spatial location, and a link to the scanned aquifer pumping test data, as well as a link to the table of converted pumping aquifer test data using the master key ID field in the Public Water Supply database. If a pumping test was not converted into a table then the database should reflect the reasons for this decision.

- \* Metadata following the Federal Geographic Data Committee - Content Standard for Digital Geospatial Metadata (FGDC CSDGM) standards in ESRI-defined Extensible Markup Language (XML) format; and

- \* A report on the project detailing approach, methods, issues, and recommendations for the future (hard copy and electronic versions in both Microsoft Word 2003 format and in Adobe Acrobat 8.0 PDF compatible format).

In addition, we expect potential contractors to indicate their abilities in:

- \* processing large datasets;
- \* organizing and documenting relational databases;
- \* technology transfer;
- \* producing high-quality reports; and
- \* meeting deadlines.

The Statement of Qualifications shall not be more than 15 pages in length, excluding qualifications and experience of project staff and HUB plan. Applicants should be familiar with standards and requirements for the groundwater availability models associated with the Groundwater Availability Modeling Program and how the information from this project may be later incorporated into a numerical flow model.

## Description of Funding Consideration

Up to \$1,320,000 has been identified for water research assistance from the TWDB's Research and Planning Fund for the research for these four projects. For (1) re-visiting and updating the framework for the northern portion of the Gulf Coast Aquifers from the Brazos River to Louisiana we have allocated \$300,000 from fiscal year 2010 funds, (2) using remote satellite information and analysis to better quantify groundwater recharge and evapotranspiration in Groundwater Management Area 8 we have allocated \$600,000 from fiscal year 2010 funds, (3) compiling and scanning aquifer pumping tests for aquifers located in Groundwater Management Area 8 from hard copy data associated with the Texas Commission of Environmental Quality's Public Water Supply Program we have allocated \$220,000 from fiscal year 2010 funds and (4) developing three dimensional visual tools representing the various components of flow to, within, and from aquifers we have allocated a total of \$200,000 (100,000 from fiscal year 2010 and 100,000 from projected fiscal year 2011 funds). It should be noted that for the last one of the proposed projects a portion of the funds will be available from fiscal year (FY) 2010 funds prior to September 1, 2010, and the remainder after September 1, 2010 from FY 2011 projected funds.

Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

## Deadline, Review Criteria, and Contact Person for Additional Information

Six double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, April 26, 2010. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-201001443  
Kenneth L. Petersen  
General Counsel  
Texas Water Development Board  
Filed: March 24, 2010



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)